

John Carter Brown.



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A N S W E R  
TO  
CONSIDERATIONS  
ON CERTAIN  
POLITICAL TRANSACTIONS  
OF THE  
P R O V I N C E  
OF  
SOUTH CAROLINA.

*Speciosa verbis, re inania aut subdola—quantoque majore  
libertatis imagine tegebantur, eo eruptura in infensus  
servitium.* TACITUS.

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ANNALS

CONSTITUTION

POLITICAL TRANSACTIONS

OF THE

SOUTH CAROLINA

FROM 1776 TO 1865  
BY JAMES H. CLARK  
TACITUS

LONDON

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## P R E F A C E.

*THE* Writer of what is here submitted to the Public, thinks an *Apology* necessary for the Freedom and Severity of his Remarks upon the Author of the “*Considerations* ;” who that Author is, is no Secret.—His Inconsistency in boasting \* of his Attempt to precipitate the Execution of the odious Stamp Act—his triumphing † in the “*local Distresses*” and Punishment” of the Colony, and his pretended good Wishes ‖ for the “*Prosperity*” of South Carolina”—His vain and frequent Repetitions of his Candor and Love of Truth, and the glaring Partiality of his State of Facts and illiberal ludicrous Treatment of the House of Assembly, required such Resentment ; and it is justified by his having notoriously incurred the Reproach, Contempt, and universal Detestation of the Inhabitants of that Province on account of his wicked Practices there, both in his public and private Characters.

\* *Consid.* P. 5.

† *Ibid.* P. 30.

‖ *Ibid.* P. 73.

P R E F A C E

THE Writer of what is here presented to  
the Public, has been very much  
for the Freedom and Liberty of the  
upon the Author of the "Golden Age";  
and that Author is, it is no secret. — This in-  
congruity is perhaps of his attempt to pre-  
sents the Elements of the Christian religion, and  
— the accompanying is in the "Book of the  
"and Purgatory" of the Colonies, and the  
presented good Writer // for the "Golden Age"  
"of South Carolina" — This is a new and pre-  
vious Representation of the Colonies and their  
Trade, and the same Principles of the same  
of Peace and Liberty, and Liberty, and Liberty  
the House of Representatives, required such Re-  
ment; and it is hoped by the same writer  
only incurred the National Congress, and  
universal Recognition of the Independence of the  
Provision on account of the United States  
there, and in his power and power, and power.



JOHN CARTER BROWN

# A N S W E R

T O

Considerations on certain Political Transactions

I N

## SOUTH CAROLINA.

**I**T has been the Misfortune of this Country, and was originally the Cause of all our unhappy Disputes with *America*, that Men in Power adopted Opinions, and formed Measures, upon the false and partial Representations of ignorant or interested Individuals. It was to this the Stamp Act owed its Birth. It is from this, that every irritating and offensive Operation has arisen; till the Colonies are almost forced from those Ties of Affection and Respect for this Country, which are the only sure Foundation of their Utility and Attachment.

That the Colonies are discontented and disturbed—that Government is embarrassed, from one End of the Continent to the other—are Facts, which cannot be controverted. In my  
A Opinion,

Opinion, the Cause is equally clear and unquestionable. Since the Dispute unhappily arose between the two Countries, Men of bad Characters, desperate Fortunes, and profligate principles, availing themselves, as such Men ever do, of the Temper of the Times, have recommended themselves, by the basest Means, to Favour in *England*. They have artfully given, not the Intelligence that was true, but that was agreeable; not the Information that was useful to the Minister, but profitable to themselves. It was singularly unfortunate, that they recommended themselves exactly in Proportion to their misleading the Minister. They fostered his Prejudices, perverted his Judgment, and inflamed his Zeal for maintaining the Authority of this Country; which a Moment's true Reflection should have informed him, could never be more dangerously engaged, than in an obstinate Perseverance in Measures, originally wrong and eventually obnoxious.

While Government has been embarrassed, and the People distressed, by the Measures formed on these Misrepresentations; the Authors of them have been rewarded. They have been suddenly advanced to Honors, Dignities, and Places of Responsibility and Emolument, of which they were utterly unworthy. Flattered by their Success, what was experimental at first, became soon a settled Practice; new Methods of invading the  
Rights



Rights of the People were devised, and all Opposition to such Attempts was imputed to the Designs of a factious Few, or to the Contumacy of the Whole. Their Representations still gained Credit; and as bad Men, from being countenanced, grow every Day more daring and flagitious, they are now arrived at such an Extremity of Wickedness as to affirm, that the Constitution and Liberties of the Provinces are merely *ex gratia*, flowing wholly from the Bounty of the Crown\*, that they should be abridged or modelled to their Measure; and instead of choosing proper Men to manage the Business of the Crown, the People are to be subdued to the Management of any Man.

There cannot be a stronger Illustration of the Truth of these Reflections, than a Pamphlet which has lately appeared under the Title of *Considerations on certain Political Transactions of the Province of South Carolina*.

The Author of these Considerations introduces himself under the Mask of a Devotee to Truth, which generally covers a premeditated Purpose of Misrepresentation. He tells us, "the great Aim of a worthy Writer ought to be directed to the Search of Truth." Nothing more

\* Considerations, p. 37.

undeniable; but we shall find his Researches have had a very different Direction, or have failed, most miserably, of their Aim. I trust, that in the Course of these Observations on his extraordinary Performance, he will feel the Force of what he has incautiously quoted from Dr. *Cudworth*—  
 “ That Truth is the most unbending and un-  
 “ compliable, the most necessary, firm, immu-  
 “ table, and adamantine Thing in the World.”  
 It is the Want of this adamantine Material, which renders his Work flimsy and unsubstantial; it is the Want of this necessary Ingredient, which must render the Composition contemptible.

Professing not to treat of the Policy of the Stamp Act, he ventures an Opinion, that the Repeal of it will be an Epoch in the Annals of *British* Story.—And why? Not because it was a memorable Instance of the Wisdom of Parliament in retracting from a Measure impolitic, and unjust; but because, “ since that Pe-  
 “ riod the public Affairs of these Countries have  
 “ been in a State of almost ruinous Distraction;  
 “ and what was probably meant to inspire Gra-  
 “ titude and Love; has rather kindled Rancour  
 “ and Disgust—the Affection of the parent State  
 “ seems to be considered as the Effects of aged  
 “ Fondness and impotent Attachment: And  
 “ sorry He is to say, that Concessions have daily  
 produced



“ produced Usurpation and Resistance; one  
 “ Claim has been followed by another, which  
 “ generating more, have multiplied like the in-  
 “ creasing Power of Numbers in a Course, as it  
 “ were, of geometrical Progression.”

He ought indeed to be both sorry and ashamed of such Jargon as this. But why would he not favour us with a few Facts in Support of this Rhapsody? Why would he not shew, that Opposition has risen to much greater Violence *since* the Repeal, than *before*—that instead of Congresses of Peace, there have been Councils of War; instead of Riots, there have been Rebellions; and that instead of burning the Stamp Papers, they have burnt the Commissioners of the Customs? Why did he not name some one of this wonderful Series of Concessions? He is mistaken, if he imagines it will please Lord *Hillsborough* and the King's Friends, to say they have made Concessions to *America*. They pride themselves in the Reverse. They pride themselves in maintaining a Right to Tax, when the Exercise of it is useless, and in persevering in Measures which cannot possibly be profitable, and may be highly pernicious. “ They have re-  
 “ linquished the Revenue, but judiciously taken  
 “ Care to preserve the Contention. It is not  
 “ contended, that the Continuation of the Tea  
 “ Duty is to produce any direct Benefit what-  
 “ ever

“ ever to the Mother Country. What is it then  
 “ but an odious, unprofitable Exertion of a speculative Right, fixing a Badge of Slavery  
 “ upon the *Americans*, without Service to their  
 “ Masters\*?”

We have heard of their opposing the Usurpation of this Country over their Property; of their resisting a Claim in Parliament to raise a Revenue upon them without their Consent—but we are yet to be informed, in what this geometrical Progression of Usurpations which they are charged with having made consists. He was too modest to enumerate the many Proofs of “ Affection” which *America* has received from the parent State, since the Repeal of the Stamp Act. Such as the Declaratory Act; the Revenue Act; the Suspension of the Legislature of *New York*; the Establishment of a Board of Commissioners; the Appointment of Admiralty Courts; the Troops sent to *Boston*; the violent Resolves of both Houses of Parliament, founded on the Falshoods of Governor *Bernard*; the pensioning of their Judges, and thereby rendering Life, Liberties, and Property insecure; the dangerous, and unconstitutional Commission against *Rhode Island*—and a Multitude of other Measures, all marking the same tender Regard to

\* Junius.



their Rights, the same parental Attention to their Complaints, manifesting the same *Fondness and Attachment*, and calculated to inspire Gratitude and Love into her redressed and rejoicing Children.

The Gentleman was prudent in waving the Defence of the Policy of the Stamp Act; but on what Ground will he justify the Revival of the odious Principle of that Act, under the Form of Duties imposed on Tea, Paper, Paint, &c. It is from that Act we must date the Renewal of the Disturbances in *America*. The Fire of the Stamp Act was scarce covered by the Ashes of its Repeal, when it was blown up anew, by imposing Duties for the Purposes of a Revenue, and the other oppressive Concomitants of that Imposition. The only Time of Repose was the short Interval between the Repeal of the Stamp Act in 1766, and the passing the Revenue Law in 1767. Since that Time the Colonies have indeed been in a "State of almost ruinous Distraction," not only because it was never totally repealed, but because every Measure has been studiously taken to alarm, and irritate them. They have seen a Revenue raised upon the worst Principles, applied to the worst Purposes. The Business of Spies and Informers has not only been the honourable Employment of those in Office, but the surest Means

of Preferment. Hence it is, that more Titles have been conferred, and more sudden and surprizing Elevations have taken Place in *America*, since that Period, than from the First Settlement of the Colonies to that Time. Whoever will enquire into the Cause of those Discontents, which have subsisted in our Provinces, will find it in the Measures I have mentioned; whoever will look a little forward must perceive, that unless these Measures are totally altered, the State of Things will at length arrive at that Point, when the Decision of Heaven alone must direct the Event.

But to put this Writer at once to Shame and to Silence; to shew that the Period from which he dates, and the Causes to which he imputes, the Disturbances in *America*, are equally false; I will produce Evidence, the decisive Authority of which, I think, no one of his Stamp will controvert—it is that of the Earl of *Hillsborough* and Sir *Francis Bernard*\*.

WHITEHALL, April 22d, 1768.

TO GOVERNOR BERNARD.

“IT gives great Concern to his Majesty to find, that the same *Moderation* which ap-

\* See their Letters.

“ peared



“ peared by your Letter, to have been adopted  
 “ at the Beginning of the Session, in a full As-  
 “ sembly, had not continued ; and that instead  
 “ of that *Spirit of Prudence and Respect for the*  
 “ *Constitution*, which seemed at that Time to in-  
 “ fluence the Conduct of a large Majority of  
 “ the Members, a thin House, at the End of  
 “ the Session, should have presumed to revert  
 “ to, and resolve upon a Measure of so inflam-  
 “ matory a Nature, as that of writing to the  
 “ other Colonies on the Subject of their in-  
 “ tended Representations against some late Acts  
 “ of Parliament. His Majesty considers this  
 “ Step, as evidently tending to *create unwar-*  
 “ *rantable Combinations*, to *excite* an unjustifiable  
 “ Opposition to the constitutional Authority of  
 “ Parliament, and to *revive* those unhappy Di-  
 “ visions and Distractions which have operated  
 “ so prejudicially to the true Interests of *Great*  
 “ *Britain* and her Colonies.”

Here we see the fullest Acknowledgment of  
 the Revival of a Revenue Act being the Cause  
 which moved the Assembly of *Massachusetts Bay*  
 from that Moderation in their Measures, and that  
 Respect for the Constitution, which the Repeal  
 of the Stamp Act, ungraciously as it was accom-  
 panied by the Declaratory and Mutiny Acts, had  
 inspired. And this Temper was so very re-  
 markable, that Governor *Bernard*, in his Letter

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of

of the 30th of *January* 1768, says, “ They have  
 “ acted in all Things, even in their Remonstrance,  
 “ with Temper and Moderation : They have  
 “ avoided some Subjects of Dispute, and have  
 “ laid a Foundation for removing some Causes  
 “ of former Altercations.”

And Lord *Shelburne* to Lord *Charles Montague*,  
 Governor of *South Carolina*, writes—

“ My Lord,—I am commanded by the King  
 “ to acquaint you, that his Majesty has been  
 “ pleased to receive very graciously the dutiful  
 “ and affectionate Address of his loyal Province of  
 “ *South Carolina*. His Majesty sees with great Sa-  
 “ tisfaction, that his *American* Subjects in general  
 “ have shewn the sincerest Thankfulness and Gra-  
 “ titude for his paternal Goodness and Condescen-  
 “ sion, and for the tender Regard and Considera-  
 “ tion of his Parliament—and his Majesty rests as-  
 “ sured, that his Province of *South Carolina*, as well  
 “ as his other *American* Provinces, will ever conti-  
 “ nue to merit his most paternal Regard. — Signed  
 “ SHELBURNE.”

The same pacific Disposition, the same Spirit  
 of Accommodation and Reconcilement had ma-  
 nifestly pervaded all the Colonies ; since other-  
 wise Lord *Hillsborough* could with no Colour of  
 Propriety have charged the circular Letters with  
 a Ten-



a Tendency to *create unwarrantable Combinations, to excite Opposition to parliamentary Authority, and to revive former Distractions.* Indeed their Acquiescence under the Mutiny Act could not have proceeded from any Consideration, but the utmost Reluctance to revive a Dispute with the Mother Country, a Dispute which the *Americans* always felt as most unhappy *Necessity*; and to which nothing but the arbitrary Proceedings, which were soon renewed here, could have compelled them.

So much for the Paragraph which the Author has bestowed upon *America* at large; a Paragraph small indeed, but full of Falshood and Malignity. Let us now attend him through his Observations on the Proceedings in *South Carolina*, which is the particular Object of his Enmity.

Wit is a Weapon not easily wielded nor easily resisted; especially when it is so keen as our Author's, and employed upon so fit a Subject as the Omission of writing Pamphlets upon the Stamp Act. It was indeed highly criminal in the People of *South Carolina* not to employ him upon that Occasion—a small Sum would have engaged him on either Side, and he was probably as capable of Writing then as he is now, unless his new-acquired Dignity should have improved his Faculties.

Without attempting to apologize either for their not writing Pamphlets themselves, nor availing their Cause of this Gentleman's Abilities, I shall proceed to shew that the Vote of 1500 l. Sterling, to the Supporters of the Bill of Rights by the Assembly, was *constitutional in its Mode, and laudable in its Intention.*

The Cause of Liberty is common to the whole Empire. The great Foundations of Freedom are the same on both Sides of the *Atlantic*, nor can they be subverted in the one, without being shaken in the other. With how much more Force does my Lord *Chatham's* Admonition, "that  
 " Three Millions of *Americans* reduced to Slavery  
 " would be fit Instruments of bringing Subjection upon *Great Britain*," apply to *America*? The same Lust of absolute Dominion had prompted an Invasion of the Liberties of the People in both Countries; and a corrupt House of Commons was the Instrument of Oppression, as well in *America* as in *England*. To rouse the People, and resist, by all legal Means, those arbitrary Attempts, a Number of Gentlemen, many of them Members of Parliament, and most of them distinguished for Rank and Abilities, associated together under the Title of Supporters of the Bill of Rights. The Principles and Conduct of the Society procured them the Confidence and Respect of the People of *England*,



*England*, and intitled them to the Assistance of those in *America*. The Opposition to an arbitrary Administration, if successful, must have been equally beneficial to the whole Empire, and therefore it was wise Policy in the Assembly of *South Carolina* to promote their patriotic Purposes. A general Redress of Grievances must have followed the Removal or Punishment of those Ministers, from whose evil Counsels all those Grievances arose. Parliaments have been corrupt; they have betrayed those Rights they were intrusted to preserve, and instead of being the Guardians of public Liberty, have been an Engine of Oppression in the Hand of the Crown. It is our Misfortune to see such a Parliament at present; and in such Circumstances, the most moderate and constitutional Remedy is to persuade the People to be more cautious and select in the Choice of their Representatives—to stipulate the Redress of the principal political Grievances, as the express Condition on which they are chosen—and not to sell their Votes, *lest* their Liberties should be sold in Return. To impress these Principles has been the noble Endeavour of the Society of the Supporters of the Bill of Rights. Nor do they despair of Success. The Foes of Freedom may yet see an *English* Spirit roused, which nothing can resist.

But

But this Writer tells us, his Majesty's Council pronounced this Vote of the Assembly to be neither *honourable, fit, nor decent* \*. To relieve us, however, from the Surprise this would occasion, he informs us in another Place †, “ That this Council seldom consists of more than Five Persons, and commonly only Three assemble to dispatch the most weighty Concerns.” The Consequence of this, continues he, is, that “ they fall into Derision and Contempt.” There cannot be a better Reason given for their strange Declaration. The Assembly could not feel much Concern about the Opinion of Three or Five ridiculous and contemptible Tools of Government, so far as it touched themselves; but the Consequences to the Public they always lamented.

Not contented with this Invektive from the Council, the Author has endeavoured to fix a Charge of great Ingratitude upon the Colony for this Vote. “ That the Act, says he, was both idle and wanton, may appear from a “ a Consideration of the *royal Predilection in Favour of this Colony on numberless Occasions.* “ The King's Ministers have ever been open to “ Access, and almost every Proposition from the “ Agent has been attended with remarkable Suc-

\* P. 10.

† P. 72.



“ *cess*: In War, we have been peculiarly pro-  
 “ *tested by an early Appointment of Convoys*; and  
 “ Government has afforded its best Aid to pro-  
 “ *cure liberal Bounties on the various Products of*  
 “ *the Country*: In short, the Colony of *South*  
 “ *Carolina* may be considered as One of the most  
 “ favoured Soils in his Majesty’s *American Do-*  
 “ *minions.*”

The King, his Ministers, and the Government are much indebted to this Writer, for thus arraigning their Justice and Impartiality. For surely if it were true, that Access has been more easy to the Agent and Petitions of *South Carolina*, than to those of the other Colonies, and that the Trade of the former was more protected by the Appointment of Convoys, than that of the latter; it would be a Proof of Partiality at the Expence of Justice. But they do not deserve the Imputation; because the Facts on which it is founded, are not true. Agents and Petitions are heard of course; and in this therefore it is idle to talk of Predilection. It has however been the Misfortune of the Province to have the Applications of her Agents and the Prayer of her Petitions denied, in repeated Instances, though founded on the clearest Justice. Two or Three Proofs

out

out of Numbers, will be sufficient. The Agent applied in vain against the Repeal of the Paper Money Bill in 1770, which was attended with such infinite Inconveniencies to the Province.—The Petition of the House of Assembly, praying that the Offices of Attorney General and Surveyor General, which were united in the Person of *Egerton Leigh*, Esquire, should be separated, as the same Person could not consistently, and without Injury to the Public, hold Two Offices which were intended to check each other, was rejected; the Interest of the Individual outweighing that of the Community—the several Applications and Petitions, which have been made against this grievous Instruction, have totally failed of Success. These Instances are sufficient to shew, that neither the Crown nor its Ministers are justly chargeable with Partiality to the Province, in giving too favourable an Ear to their Complaints. It is true, that the Appointment of Convoys, like every Thing else, during the glorious Administration of *Mr. Pitt*, was regular, and Trade well protected; but this was done equally for all the Colonies, as well as for that of *South Carolina*, and therefore is no Proof of Predilection. Indeed it properly shews the Attention of that great Minister, to the general Interests of his Majesty's Subjects; for every one must



must know that during a War, *American* Property shipped for *England* is insured in *England*, and therefore, if the Ships are taken the Loss falls, in fact, upon the People of *England*. Safe and regular Convoys are, for this Reason, more beneficial to *England* than to *America*; as the People of the one would suffer an Inconvenience, while they of the other would sustain an actual Loss by the Depredations of the Enemy.

Though it is certain, that Bounties upon the *American* Productions eventually operate to the Advantage of the Colonies; yet it is equally true, that the Benefit of *Great Britain*, and not that of the Colonies, is the sole Motive for granting such Bounties. In Proof of this, I appeal to the Preamble of the Act, which gives a Bounty upon *Indico*, observing only that the Preamble of an Act is an undeniable Record of the Intention of Parliament, in making the Law. The Twenty-first of *George* the Second, Ch. 30, recites, that “whereas the making of  
 “*Indico* in the *British* Plantations in *America*  
 “would be advantageous to the Trade of this  
 “Nation, as great Quantities are used in dying  
 “the Manufactures of this Kingdom; which at  
 “present being furnished from foreign Parts,  
 “the Supply of that necessary Commodity is be-  
 “come at all Times uncertain, and the Price fre-  
 C “quently

“ *quently exorbitant*; and whereas the Culture  
 “ thereof has been found to succeed so well in  
 “ the Provinces of *South and North Carolina*,  
 “ that there is Reason to hope, by a proper  
 “ Encouragement, the same may be increased  
 “ and improved to such a Degree, as not only  
 “ to answer all the Demands of his Majesty’s  
 “ *British* Subjects, but furnish considerable Quan-  
 “ tities to *foreign Markets*.—Be it therefore enacted,  
 “ *Ed, &c. &c.*”

Here we see the Advantage of the Manufactures of this Kingdom, and the Emolument of his Majesty’s *British* Subjects, in furnishing this valuable Article of Trade to foreign Markets, were the only Considerations with the Legislature in giving a Bounty on Indico. The Benefit of the Colonies was never in Contemplation; and it is not therefore easy to conceive, how such Acts can claim their Gratitude. The Operation of the Bounty has repaid the Expence a thousand Fold, and fully answered the Expectation of Parliament. For instead of depending on Foreigners for this necessary Article, and being subject to their Extortion, this Country was soon supplied from *America* for her own Consumption, and enabled to supply foreign Markets so as to extend her Commerce, diminishing that of her Rival, and saving herself an immense annual  
 Expence.



Expende. For the accurate Mr. *Anderson* informs us, that till the Operation of this Bounty,  
 “ *France* supplied the greatest Part of *Europe*  
 “ with this Commodity from her *West India*  
 “ Islands; and *Britain* and *Ireland* were, by  
 “ common Estimation, reckoned to have paid  
 “ to *France* about 200,000*l.* annually for  
 “ Indico\*.”

How much and immediately the Interest of *Great Britain* was concerned in the Object of these Bounties, will clearly appear from the following Passage out of the same Author: “ The Necessity which all maritime trading Nations lie under, of being supplied with naval Stores, and more especially *England*’s very Need thereof, as well for the royal Navy, as for her numerous mercantile Shipping, has often put it in the Power of the northern Crowns to distress such Nations as had none of their own. This eminently appeared in the Year 1703, from the Tar Company of *Sweden*, who absolutely refused to let the *English* Nation have any Pitch or Tar (although ready Money was always paid for it) unless *England* would permit it all to be brought in *Swedish* Shipping, and at their own Price, and likewise only in such Quantities as that Company should

\* On Commerce, V. 2. p. 384, Fel.

“ please to permit. This Disappointment (as  
 “ the late ingenious Mr. *Gee* likewise observes in  
 “ his Trade and Navigation of *Great Britain*  
 “ considered, p. 82.) put the Government and  
 “ Parliament on the Method of allowing of  
 “ Bounties for the Raising of Pitch and Tar,  
 “ Hemp and Flax, and Ship Timber, in our  
 “ own *North American* Colonies; as particularly  
 “ in *Carolina* (the southernmost Parts of which  
 “ lying near the Latitude of *Lower Egypt*, and  
 “ the northernmost Part nearly with *Ancona* and  
 “ *Bologna* in *Italy*, in which the best Hemp and  
 “ Flax grow.) The First Statute of this Kind,  
 “ was the Act of the Third and Fourth of  
 “ *Queen Anne*, ch. x. *For Encouraging the Im-*  
 “ *portation of Naval Stores from her Majesty’s*  
 “ *Plantations in America*, judiciously setting forth  
 “ That as, under God, the Wealth, Safety, and  
 “ Strength of this Kingdom, so much depend  
 “ on the royal Navy and Navigation thereof,  
 “ and that the Stores necessary for the same,  
 “ being hitherto brought in chiefly from foreign  
 “ Parts and by foreign Shipping, at exorbitant  
 “ and arbitrary Rates—which might be pro-  
 “ vided in a more certain and beneficial Manner  
 “ from her Majesty’s Plantations in *America*,  
 “ where the waste Tracts of Land lying near the  
 “ Sea and on navigable Rivers, may commodi-  
 “ ously afford great Quantities of all Sorts of  
 “ naval Stores, by due Encouragement, which  
 “ may



“ may likewise tend to the farther Employment  
 “ and Increase of *English* Shipping and Seamen  
 “ —and also of the Trade and Vent of the  
 “ Woollen and other Manufactures and Products,  
 “ in Exchange for such naval Stores now pur-  
 “ chased of foreign Countries for ready Money.  
 “ —It was therefore enacted, That whoever  
 “ shall (in Ships and with Sailors, qualified as  
 “ by the Acts of Navigation) import from the  
 “ *English* Plantations in *America* the undernamed  
 “ naval Stores, shall be intituled to the following  
 “ Bounties\*, &c.”

To free the Manufactures and the Navy of  
 this Country, on which its Wealth, Safety, and  
 Strength depend, from a precarious and expen-  
 sive Dependence on Foreigners, to extend its  
 Trade, and encourage its very Staple the Woollen  
 Manufacture, were the great and momentous  
 Objects of these Bounties. These Views have  
 been fully accomplished. Surely then if Grati-  
 tude be due on either Part, it is from *Great*  
*Britain*, which is enabled by the Produce of  
*America*, to see her Navy ride the Ocean inde-  
 pendent of other Nations, while her Expences  
 are diminished, her Trade increased, and the  
 Mart for her Manufactures augmented and se-  
 cured. And to shew that the Interest of *America*

\* Ibid. p. 228.

was never considered but that it might be sacrificed, the Commissioners of the Navy are empowered to fix their own Price on the Produce of the *American's* Labour, by the following Proviso. —“ That for the particular Benefit of the royal “ Navy, the Pre-emption or Refusal of the said “ naval Stores shall be tendered to the Commissioners of her Majesty's Navy, upon “ landing the same.”—In the same ungenerous and selfish Spirit, Parliament has excluded the *Americans*, by the particular Words of the Act, from the Bounty given in the *Greenland* Whale Fishery.

Such are the Motives from which this Country granted Bounties on the Productions of *America*; Motives which manifestly demand the warmest Returns of Gratitude from the Colonies; We have heard enough of this Nonsense, from much more respectable Persons than this Writer. If he, or any other Man, can produce the Shadow of an Instance, in which this Country did a single Act for the sole or avowed Advantage of *America*, I shall think less contemptibly of that selfish, ungenerous, arbitrary Policy, which pervades all her Laws and Regulations respecting her Colonies. One dwells upon such Subjects with Regret; but it is necessary that such idle Notions and unjust Claims should have an Answer. Should the *Americans* be ever driven to stop all  
Commerce



Commerce with this Country for One Year, it will effectually decide the Question. It will then be clearly understood which Country is most dependent on the other, from which the most Aid is received, and from which the greatest Gratitude is due.—But to return—

The Commons House of Assembly, who are the sole Givers of the People's Money, and the sole Judges of the Purposes for which it is given, had exercised their Right in voting the 1500*l.* and in the ordinary Course of Proceeding, inserted that Sum in the Estimate of the public Debt annexed to the Tax Bill, as an Article due to *Jacob Motte*, Esquire, for so much advanced by him; the Council, so respectable as our Author describes them, thought proper to return the Bill, or to speak more constitutionally, to refuse giving their Advice to the Lieutenant Governor (the Governor being absent) to pass it.—

If voting this Sum was an unconstitutional Act, or according to the Council, an Act, neither honourable, fit, nor decent—most certainly it was the Duty of the Lieutenant Governor, consulting his Majesty's Honour and Dignity, to have dissolved the Assembly immediately upon passing the Vote on the 8th *December* 1769.—Certainly too it was the Duty of the Council,  
consistently

consistently with that tender Regard which they have since pretended for the Interest of the People, to have advised his Honour to do so.—Such an Exertion of Prerogative, admitting their Representation to be true, would have been equally constitutional, fair, and honourable, and preventive of the Evils which have attended a contrary and insidious Conduct.

But the Lieutenant Governor well knew that such Votes of Credit or Orders to the public Treasurer to advance Money for public Services had been the common Practice, as the Journals of Assembly prove in numerous Instances from the earliest Date, many, in which himself, in the various Characters of a Member of Assembly—a Member of Council—and Lieutenant Governor, had been particularly concerned.—His Honour therefore did not find it expedient to fly so openly in the Face of Facts.—The Council, ever watchful for Opportunities to advance their own Importance, worked under Ground, transmitted by some secret Emissary a false Representation,—and then in the Author's Language waited for a Breath of Inspiration.—The Meeting of the Assembly was postponed to a distant Day, and the Members kept in Ignorance of the Accusation lodged against them.—At length flattering Assurances arrived, that a Rod was preparing for chastising those who had dared

dared to vote Money, “ for supporting the constitutional Rights of his Majesty’s Subjects in *Great Britain and America.*” The Assembly was then suffered to meet, the Council came forth and gave the Alarm by returning the Tax Bill, accompanied by their notable Declaration, that the Grant was neither honourable, fit, nor decent, determined, as appears by their subsequent Behaviour, to maintain their Point, even at the Hazard of ruining the Province—their Plot succeeded—a Contest arose between *them* and the House of Assembly—a Prorogation ensued, and further Time was gained; in which they received the promised Aid from Lord *Hillsborough*, who, upon the Misrepresentation made to him, framed and transmitted the following Instruction signed by the King.

D

COPY.



C O P Y.

*Additional Instruction to our trusty and well-beloved Charles Greville Montague, Esq; commonly called Lord Charles Greville Montague, our Captain General and Governor in Chief of our Province of South Carolina in America, or in his Absence to the Lieutenant Governor or Commander in Chief of our said Province for the Time being. Given at our Court at St. James's, the 14th Day of April 1770, in the Tenth Year of our Reign.*

GEORGE R.  
(L. S.)

WHEREAS it hath been represented to us, that our House of Representatives or Lower House of Assembly of our Province of South Carolina in America, have lately\* assumed to themselves a Power of ordering, without the Concurrence of our Governor and Council, the public Treasure of our said Province, to issue and advance out of the public Treasury such Sums of Money, and for such Services, as they have thought fit, and in particular, that the said Lower House of Assembly did, on the 8th Day

\* That this Representation is false, the Journals of the House of Assembly uniformly prove.

of *December* last past, make an Order upon the said public Treasurer to advance the Sum of Ten thousand and Five hundred Pounds Currency out of any Money in the Treasury, to be paid into the Hands of Mr. Speaker, Mr. *Gadsden*, Mr. *Rutledge*, Mr. *Parsons*, Mr. *Ferguson*, Mr. *Dart*, and Mr. *Lynch*, who were to remit the same to *Great Britain* for the Support of the just and constitutional Rights and Liberties of the People of *Great Britain* and *America*: And whereas it is highly just and necessary, that the most effectual Measures be pursued for putting a Stop to such dangerous and unwarrantable Practices, and for guarding for the future against such *unconstitutional Application of our Treasure*, cheerfully granted to us by our Subjects in our said Province of *South Carolina*, for the publick Uses of the said Province, and for Support of the Government thereof; it is therefore our Will and Pleasure, and you are hereby directed and required, upon pain of our highest Displeasure, and of being forthwith removed from your Government, not to give your Assent to any Bill or Bills that shall be passed by our said Lower House of Assembly, by which Bill or Bills any Sum or Sums of Money whatsoever shall be appropriated to, or Provision made for, defraying any Expence incurred for Services or Purposes not immediately arising within or incident to our said Province of *South*

*Carolina*, unless upon special Requisition from us, our Heirs and Successors; nor to any Bill or Bills for granting any Sum or Sums of Money to us, our Heirs and Successors, in which Bill or Bills it shall not be provided in express Words, that the Money so to be granted, or any Part thereof, shall not be issued or applied to any other Services than those to which it is by the said Bill or Bills appropriated, unless by Act or Ordinance of the General Assembly of our said Province. And is our further Will and Pleasure, and you are hereby directed and required, upon pain of our highest Displeasure as aforesaid, not to give your Assent to any Bill or Bills that shall be passed by our said Lower House of Assembly as aforesaid, by which any Sum or Sums of Money whatever shall be granted to us, our Heirs and Successors, generally and without Appropriation, unless there be a Clause or Clauses inserted in the said Bill or Bills, declaring and providing that the said Money so to be granted shall remain in the Treasury, subject to such Appropriation as shall thereafter be made by Act or Ordinance of the General Assembly, and not otherwise. And it is our further Will and Pleasure, that you take especial Care that in all and every Bill and Bills so to be passed by you as aforesaid for raising and granting public Monies a Clause or Clauses be inserted therein *subjecting the public Treasurer*, or any other Person or Persons



fons to whose Custody public Monies may be committed, in case he or they shall issue or pay any such Money otherwise than by express Order contained in some Act or Ordinance of the General Assembly, to a Penalty in Treble the Sum so issued contrary thereto, and declaring him or them to be *ipso facto* incapable of holding the said Office of Treasurer, or any other Office civil or military within our said Province. And it is our further Will and Pleasure, that this our additional Instruction to you be communicated to our Council and Lower House of Assembly of our said Province of *South Carolina*, and entered upon the Council Books.

G. R.

It was in vain the House endeavoured to obtain, from the Governor, Copies of that Correspondence with his Majesty's Ministers, on which this singular and unconstitutional Instruction was founded. An Instruction which has been the Cause of constant Contention between the different Branches of the Legislature, and must inevitably continue such, till the Commons House of Assembly shall be disposed to make a formal Surrender of their Privileges and the Rights of the People they represent; or the Crown shall be pleased to retract from an Attempt, prompted by Misrepresentation, arbitrarily to interfere in  
the

the Exercise of that which is the peculiar and incommunicable Power of the Commons.

The Author has taken Care to suppress a material Part of this Instruction, in order to conceal its having originated in Misinformation. He says it recites, " that the *Lower House had lately assumed,*" &c. &c. when in Truth, as the Reader has seen, it recites, " that *it hath been represented to us,* that our House, &c. has *lately assumed,*" &c."

That this Representation was false, and the Instruction grounded upon it improper, cannot be more clearly shewn, than by the Report of the Committee upon the additional Instruction, and in Answer to the several Messages, from the Lieutenant Governor, upon this Subject.

*Report of the Committee to whom his Majesty's additional Instruction, and his Honour the Lieutenant Governor's Messages, relative thereto, were referred.*

" **T**HAT they have considered the several  
 " Matters referred to them, and though  
 " they cannot but lament that his Honour should  
 " think the *Correspondence between himself and his*  
 " *Majesty's Ministers, in a Matter which concerns*  
 " *the*

“ *the Privileges and Proceedings of the House, so*  
 “ *secret and confidential, as to refuse a full Com-*  
 “ *pliance with their just and reasonable Request*  
 “ *without the royal Leave. Yet, your Com-*  
 “ *mittee are of Opinion that the House should*  
 “ *immediately proceed to acquit themselves of*  
 “ *the Charge contained in the said Instruction.*  
 “ *They have therefore come to the following*  
 “ *Resolutions, which they recommend to the*  
 “ *House as proper to be adopted upon this Oc-*  
 “ *casion, previously declaring that the Lieutenant*  
 “ *Governor's Answers are not so satisfactory as*  
 “ *the House had a Right to expect, and that the*  
 “ *same be not hereafter drawn into Precedent, as*  
 “ *it may be of most dangerous Consequence.*

“ RESOLVED, That it is the Opinion of this  
 “ Committee, that this House hath an undoubted  
 “ Right, which they have at all Times exercised,  
 “ to give and grant Money to his Majesty with  
 “ or without a Requisition from the Crown, for  
 “ any Purposes whatever, whether Local and  
 “ Provincial or not, whenever they think it ne-  
 “ cessary or expedient for his Service, of which  
 “ they are the sole Judges.

“ RESOLVED, That it is the Opinion of this  
 “ Committee, that in order to provide such  
 “ Money, the House hath a Right, upon emer-  
 “ gent Occasions, and when the Money is im-  
 “ mediately



“ mediately wanted, to borrow it upon the public  
 “ Faith and Credit, solemnly pledged by a Re-  
 “ solution of the House to make good and repay  
 “ the Money so borrowed; and that the House  
 “ hath exercised this Right whenever they have  
 “ thought proper.

“ RESOLVED, That it is the Opinion of this  
 “ Committee, that the House hath, *in such Cases,*  
 “ *ordered the public Treasurer to advance the said*  
 “ *Money,* who hath accordingly done so upon the  
 “ Resolution of the House, to make good the  
 “ same; and the Provision for repaying it to  
 “ him hath always been made by the Tax Acts,  
 “ which Measure cannot be unknown to the  
 “ Lieutenant Governor, whose Sanction, as well  
 “ as that of his Predecessors, it has often re-  
 “ ceived.”

“ RESOLVED, That it is the Opinion of this  
 “ Committee, that the *Order and Regulation of*  
 “ the House on the *8th Day of December last*  
 “ (the said Order being never considered by this  
 “ House but merely as a Vote of Credit) are  
 “ not unconstitutional, but *agreeable to the Usage*  
 “ *and Practice both Ancient and Modern of the*  
 “ *Commons House of Assembly of this Province.*

“ That the public Treasurer having advanced  
 “ the Money mentioned in the said Order in

“ pursuance thereof, on the Resolution of the  
 “ House to repay the same, did in his Account  
 “ charge it *to the Public*, and not to any *particu-*  
 “ *lar Fund*; and that in the Schedule of the  
 “ Tax Bill, the House inserted the Treasurer’s  
 “ Name, as a Creditor of the Public, for that  
 “ Sum, intending to repay it in the usual  
 “ Manner.

“ RESOLVED, That it is the Opinion of this  
 “ Committee, that the House hath never at-  
 “ tempted by its single Authority, without the  
 “ Concurrence of the Governor and Council, to  
 “ *issue out of the Treasury Money appropriated by*  
 “ *Law, and apply the same to other Purposes than*  
 “ those for which it was *granted*.

“ RESOLVED, That it is the Opinion of this  
 “ Committee, that the Order and Resolution of  
 “ this House, on the 8th Day of *December* last,  
 “ cannot be deemed *dangerous or unwarrantable* :  
 “ That the same would not have been so repre-  
 “ sented, or the Power of this House, on that  
 “ Point, drawn into Question, if the Money  
 “ borrowed had not been applied towards *frus-*  
 “ *trating the unjust and unconstitutional Measures*  
 “ *of an arbitrary and oppressive Ministry*.

“ And his Honour the Lieutenant Governor  
 “ having assured the House, that all his Repre-  
 E “ sentations

“ fentations to his Majesty, by his Minifters, are  
 “ made with the strictest Regard to Truth.

“ RESOLVED THEREFORE, That it is the Opi-  
 “ nion of the Committee, that the faid In-  
 “ ftruction cannot be fupported by fuch Infor-  
 “ mation, but is founded upon a falfe, partial,  
 “ and infidious Representation of the Proceed-  
 “ ings of this Houfe: *Falfe*, in afferting that the  
 “ Houfe had lately *affumed* a Power, when in  
 “ Truth they only *exercifed* an *ancient Right*, *sup-*  
 “ *ported* by *constant Ufage*; *Partial*, in conceal-  
 “ ing its Refolution to repay the Money bor-  
 “ rowed; and *Infidious*, in artfully infinuating  
 “ that the Houfe had directed an *unconftitutional*  
 “ *Application of the Treafure granted to his Ma-*  
 “ *jefty*, in *ordering*, by its *single Vote*, without  
 “ the Concurrence of Governor or Council,  
 “ *Money appropriated by Law*, to be applied to  
 “ *other Purpofes*, and that the Censure con-  
 “ tained in the faid Inftitution is altogether un-  
 “ merited.

“ RESOLVED, That it is the Opinion of this  
 “ Committee, that the Claufes and Provisions  
 “ in the faid Inftitution relating to the Appro-  
 “ priation of fuch Monies as fhall be granted  
 “ by this Houfe, are *unneceffary*; every Law  
 “ which grants Money fufficiently fecuring the  
 “ Appropriation



“ Appropriation thereof: And as many Evils  
 “ might arise to the Province, from inserting  
 “ the Clauses relative to the Treasurer, your  
 “ Committee think the House should not sub-  
 “ mit thereto.

“ RESOLVED, That it is the Opinion of this  
 “ Committee, that a Minister’s *dictating how a*  
 “ *Money Bill should be framed* is an Infringement  
 “ of the Privileges of this House, to whom  
 “ alone it belongs to originate and prepare the  
 “ same, for the Concurrence and Assent of the  
 “ Governor and Council, without any Altera-  
 “ tion or Amendment whatever.

“ RESOLVED, That it is the Opinion of this  
 “ Committee, that whosoever made the false, par-  
 “ tial, and insidious Representation, upon which  
 “ the said Instruction is founded, and advised  
 “ such Instruction, are guilty of high Misde-  
 “ meanours, and are Enemies to his Majesty  
 “ and the Province.

“ And your Committee recommend, that  
 “ a Copy of these Resolutions be sent to his  
 “ Honour the Lieutenant Governor, and that  
 “ the Agent be instructed to represent the Mat-  
 “ ter to his Majesty in its true and proper Light,  
 “ undeceive our most Gracious Sovereign, and  
 E 2 convince,

“ convince him how much he has been imposed upon by Misinformation—thereby to avert the King’s Displeasure from his dutiful and loyal Subjects, the Commons House of Assembly of this Province.”

This Report, and the Remarks I shall make upon it, will be a full Answer to that Part of the Pamphlet, which relates to the Proceedings of the Assembly, both in voting the Money and in opposing the Operation of the additional Instruction, transmitted in consequence of the Misrepresentations made concerning that Vote. For the Reader will perceive that the Facts and Arguments of the Pamphlet are exactly similar to the Recital and Reasoning of the Instruction; except that in the former they are more exposed and weakened by being drawn out at Length, and rendered ridiculous by an Affectation of Wit.

But I must first do Justice to the Candour and Veracity of this Writer, who has not only recited partially the Instruction itself, but suppressed entirely the Report of the Committee and other Proceedings of the House, in Justification of their Conduct. Did he wish to instruct his Readers in the whole Truth, and nothing but the Truth of these Proceedings? did he expect the Judgment, formed upon a fair  
and

and full View of the Facts, would be in his Favour? or did he not rather intend to misinform their Understanding and mislead their Judgment? It is manifest he did; and it is equally true, that such Attempts are invariably prompted by a weak Head and a wicked Heart.

After mistating the Evidence on one Side, and totally suppressing it on the other, he has the Confidence to say—"Thus have I most dispassionately and candidly stated every material Circumstance attending this important Subject, nearly in the Words used by the several Parties in the Course of the Transaction; and as far as I can judge, in no Shape contradictory to their genuine Sense and Meaning. I am not conscious that any Thing is omitted that can give Light or Information in the Case; though I have been necessarily obliged to trespass upon my Reader's Patience in order to collect the Substance of every legislative Act, and bring it into a clear Point of View, so far as relates to the Vote and Order of the Commons House of Assembly; yet I trust that the Matter in Dispute will be now more clearly understood."

It will indeed, Sir, be understood from your stating it just as you would wish, favourably on  
that



that Side on which the Perversion of Truth only could obtain Judgment; falsely and injuriously on that, where the true Merits reside. When at the Beginning of your Performance, you professed yourself a downright Placeman, I did not expect any Attempt to impose upon your Reader by an Affectation of Candour and Impartiality. It requires more than puerile Credulity to believe, that a candid and dispassionate Spirit in Politics is compatible with the Principles of a *downright Placeman*.

*Quodcumque ostendis mihi sic—incredulus odi.*

How poor is the Lieutenant Governor's Pretence, for withholding from the House the Correspondence with his Majesty's Minister, on this public Point. It was *secret and confidential*. The Abuse of these Words, which have been of late Years so frequent with the *American* Governors, makes one almost sick of the Sound. Secrecy will ever be pretended where the Truth is feared; where there is a Consciousness of some unwarrantable Conduct, or evil Design. From the strict Injunctions of Secrecy, which have been mutually interchanged between Lord *Hillsborough* and some of the *American* Governors, a Stranger would be induced to believe, that these were  
not

not the official Dispatches between the King's Minister and the King's Governors, upon the public Proceedings of the King's Subjects, in his own Dominions; but the Intelligence of Spies and Informers in an Enemy's Country, or the dangerous Communications of Conspirators plotting some dark and midnight Mischief against the State. No Minister but Lord *Hillsborough* would have endured the Insult of receiving, or have descended to the giving of such Injunctions.

The Vote of the House was not intended, nor did it actually operate to divert the Money of any Fund in the Treasury from the Purposes for which it was appropriated by Law. All the Reasoning therefore against it on that Ground is futile and absurd. Such a Vote of the House never did operate on any Money in the Treasury but what was Surplus; and the very Meaning of this Word excludes the Idea of Appropriation. No Monies can be called Surplus, unless they are unappropriated. When there is no such Surplus in the Treasury, it operates as a Vote of Credit §, on the Faith of which the Treasurer

§ The Author of the Considerations elucidates this Point to his Reader, although he will not allow the Explanation to convince himself—he writes P. 27—“ and since 1752 many Orders occur, some sent  
“ for

Treasurer advances what the present Exigency requires. This was precisely its Effect in the Case before us. The Treasurer advanced the Sum upon the public Faith, and is himself the Creditor of the Public. The Council were apprised of this, from their Examination of his Assistant. They therefore well knew, that refusing to advise Assent to a Bill for the Payment of it, was only defrauding an Individual of his just Demand. Yet this is the Act which, as this Writer tells us, has procured them his Majesty's Approbation; and which the Governor signified, as he triumphantly declares, with *great Pleasure*, to his insignificant Junto. He has a satirical Turn, and surely means to ridicule Government here, when he represents it as paying Respect and Court to the Council, which he himself has painted in such contemptible Colours.

In Conformity to an Order of the House, and upon a Resolution of the House to make it

“ for Concurrence and many not—this Difference of Proceeding points  
 “ out a Distinction, for where they have ordered Monies arising from  
 “ appropriated Funds which have not been wanted, the Council's  
 “ Concurrence and Governor's Assent have been applied for——  
 “ but where the Orders have been general, they have gone upon a  
 “ Sort of Idea that there were Surplusages and Balances sufficient to  
 “ satisfy the Order without any intermediate Inconvenience till the  
 “ same should be replaced by a Tax Bill.”

good,



good, which involves a Pledge of the public Faith, the Treasurer, as has been the constant Practice, advanced the Money required; and when the Assembly made Provision for the Re-payment of it in the Tax Bill, the Council, with a Degree of Wisdom and Justice which, I believe, has no Parallel, rejected the Bill. Is it wise to create continual Confusion in public Affairs, to arrest the Business of the Legislature, to keep up a constant Cause of Contention between the representative and executive Part of Government to the Disquietude of the whole Province, for the sole Purpose of preventing the Payment of a just Debt? For admitting the House had so erred in their discretionary Power of granting Money, that the Sum was granted to Uses ever so improper and unbecoming, or as the Council have it, neither honourable, fit, nor decent; yet it is now irrevocable, nor can any possible Measure of the Council or the Governor recal the Money, or alter its Destination. The Opposition to the Tax Bill on this Ground, is therefore evidently useless, and merely vexatious. But on what Authority is the Use to which it is granted deemed unfit? We have on one Side, the Opinion of a *full*\* Assembly, as he acknow-

\* P. 7.

ledges, which granted it; that of every Assembly since, and of the People at large, who re-elected those who had passed the Vote. On the other Side, is the Governor and the Council respectable for the Number, Weight, and Wisdom of Three or Five Persons? Were this a general Matter of Judgment, who could be in Doubt which Side was most likely to err? But when we consider, that it is a Question of giving the Money of the People, and of the Use to which it is to be applied, in which the Opinion of their Representatives is the sole Arbiter, and that the Intervention of the Governor and Council is simply to assent or dissent from the Law, by which the Mode of levying what is granted by the Commons shall be prescribed; it must appear to be, constitutionally speaking, presumptuous and unwarrantable in them to decide upon the Propriety of the Purpose for which the Grant is made; and much more so, to presume to stile it unfit, dishonourable, and indecent.

But what was the avowed Purpose for which the Grant was made, and it is highly indecent to suppose any other,—“ was it not for the Support  
“ of the just and constitutional Rights and Liberties of the People of *Great Britain* and  
“ *Ame-*

"*America* \*?" Is this a Purpose, as the Council are pleased to say, neither fit, honourable, nor decent; or, as this foolish Libeller asserts, arbitrary and unjust? Could the Money of the People be applied to a Purpose more interesting? could the Power of the House be exercised on a Subject more honourable and becoming? Among the numerous Exceptions to the Proceedings of Assemblies in *America*, which have of late Years been taken, by his Majesty's Ministers, not one has been so entirely futile and splenetic as this. Vain and absurd in its Object; unjust and injurious in its Consequences; violent and unconstitutional in its Principle. Nor, as the Committee very justly observe, could such a Dispute ever have arisen, had not the Support of the just and constitutional Liberties of the People necessarily involved in it an Opposition to the unjust and unconstitutional Measures of of an arbitrary and oppressive Administration.

We shall now proceed to shew, that the *Vote of the House was agreeable to the Usage and Practice, both antient and modern, of the Commons House of Assembly in the Province of South Carolina.*

And here we might content ourselves with observing, that this has never been directly or in Argument controverted by the Minister, the

\* See the Order.



Governor, or the Council. They think it sufficient merely to reiterate the vague and indeterminate Assertions, that the Application was unconstitutional, and the Practice dangerous and unwarrantable. We have already proved, that neither of them is constitutionally competent to judge, whether the Application be proper or improper. The Determination of that must, from the Nature of the Thing, and indeed ought to rest solely with those who give the Money. It is plainly inseparable from the Right of giving, to judge of the Use for which the Gift is made; for it is that Judgment which must govern the Resolution to give or refuse. As to the Danger of the Practice, contributing to the Support of the just Rights and Liberties of the People, is certainly dangerous and justly alarming to those Men who mean to subvert them. It is therefore natural enough, that they should endeavour to shield themselves from that Danger by the Exercise of an arbitrary Vote now, and arrogating to themselves the Right of Controul in future.

But our Author admits it to have been the unquestioned Usage till the Year 1737, and since the Year 1752, for the Commons House of Assembly to order Monies to be advanced by the Treasurer, without the Concurrence of  
Council

Council or Assent of the Governor. One would imagine this Admission must conclude the Question; but to get rid of it by some Means or other, no Matter what, he desires us to reflect what slow Advances infant Societies of Men make towards Regularity or Perfection. How this applies is far beyond my Comprehension, unless it be to prove the Excellence of this Practice, which was not only necessary in the Infancy, but has been adopted in the Perfection of the Society of *South Carolina*. It surely stamps a peculiar Merit upon the Mode that bears the Sanction both of the earliest and the latest Times.

But let us not triumph too soon! This Gentleman has an Argument in petto, which, like Lord *Peter's* brown Loaf, will answer every Purpose. I will not contend with you, says he, about Trifles; I will grant that a particular Mode has been adopted for a Series of Years without Interruption or Controul—what then?—It is but an *Indulgence*, a *mere Tenure at Will*, and the Lord—that is, the Minister, or the Governor, or the Council, or whoever he pleases—may eject you at Pleasure\*.

Now under Favour of this dread Lord, I should humbly think that this Argument goes

\* R. 27. 28.

rather

rather too far, since if it be valid here, I cannot conceive why it will not be equally conclusive against all our Liberties. But if the good People of *Carolina* should be as dull as myself, and not comprehend how they came to be Tenants at Will, or to hold any of their Privileges on so precarious a Tenure; I am afraid his Premises being instable, his Conclusion, which is certainly very ingenious, will fall to the Ground. There are some old-fashioned People too, who will be constant in thinking, that what has prevailed from the Beginning of the Colony, without Question or Controul, is Part of the Constitution; and that ancient and undoubted Rights are of all others the most sacred and valuable. It is true these must be Men who are not enlightened, as our Author is, by Court Sun-shine, which has the peculiar Faculty of illuminating the Prerogative of the Crown, and obscuring the Privileges of the People. Very willing however to give this Writer Credit wherever he deserves it, I must confess there is one Truth, and that very important too, in his Performance: It is "that Reason has but little Influence in the favourite Schemes of State Intrigues\*." I know not any other possible Apology that can be made for this Instruction and its Consequences, even to the Com-



position of his Pamphlet. Had Reason, Justice, or Wisdom prevailed over those who formed them, they would never have appeared.

Our Author shews an admirable Discernment and Depth in the Principles of Government, when he asks, whether “Chains are more tolerable, because imposed by our own Consent\*.” Chains is a courtly Synonyme for Laws. And is he yet to learn, that the essential Difference between a free and a despotic Government is, that in the former, Laws are made, or imposed, if that Word will please him better, by the Consent of the People; in the latter, by the Will of the Tyrant? All Laws must, from their Nature, be coercive; and we submit to the Resignation of Part of our Liberty, to be secured in the Enjoyment of the Rest†. We may therefore safely answer, that the only Chains which are tolerable, are those imposed by our own Consent.

He thinks he has drawn an Argument of some Weight against the Assembly, from finding that the Instances of granting Orders by their sole Authority are in general for Services within the Colony; though he is obliged to acknowledge, that they have many Times voted Money for external Purposes‡. But, says he, “their having

\* P. 20.

† Locke on Government, ch. 9.

‡ P. 19.

“voted

“ voted Money to the Sister Colonies, is an Ex-  
 “ ception to the general Maxim, that they have  
 “ no Right to dispose of the People’s Money  
 “ and apply it to other Uses than for their own  
 “ immediate Service; and neither this, nor a  
 “ Grant of Monies upon the royal Requisition,  
 “ can afford the least Pretence for a Vote  
 “ grounded upon merely an *ideal* Benefit, such  
 “ as the Order states.” Is then the Preservation  
 of our Liberties, for it is *that* the Order states,  
 an ideal Benefit? To a venal Courtier, to an in-  
 veterate Tory, Liberty may appear an ideal  
 Blessing; but to every Man who deserves the  
 Name of *American* or *Englishman*, it is the illu-  
 strious Source of every Blessing we enjoy, the  
 most worthy of contributing to and contending  
 for, the sacred Object of our Solitude and  
 Devotion. But in what Principle, in what  
 Practice of our Constitution did he find this  
 Maxim of the Grants of the People being  
 limited to their own Use? He is not pleased to  
 give any Authority for it. He is to coin  
 Maxims at his Pleasure; if they serve his Pur-  
 pose, it is sufficient. The Delegates of the  
 People stand in the Place, and possess all the  
 Powers of the People. Who is it that can limit  
 the Uses, or prescribe the Purpose, for which the  
 People, or their Representatives, are to give their  
 own Money? Is it not an Absurdity to suppose  
 his

his Will limitable, who gives his own, by any Thing but his own Reason and Discretion? Some one must hold the Purse Strings; some one must draw them *ad libitum*. With whom is this Power trusted by the Constitution, with whom can it be so safely trusted, as with those whom the People have chosen from among themselves, whom they may reject or refuse, who share with them in all the Benefits they procure, in all the Burdens they impose? Could it be reposed, with equal Confidence, in the supreme Power? Mr. *Locke* will answer for me, who lays it down as a fundamental Maxim, “ that  
 “ the Supreme Power must not *raise Taxes* on  
 “ the Property of the People, without the  
 “ *Consent* of the People given by themselves,  
 “ or *their Deputies* \*.” Much less could this Trust be confided in the Minister or the Governor, or the Council of State, who are not appointed by the People, nor amenable to them, nor necessarily known to them, or connected, or interested with them. The Consent of the People is the sole Requisite to the Gift; and the established Forms of the Constitution make the Consent of their Delegates equivalent to that of the People themselves.

\* *Locke*, *ibid.* ch. 11.



Taking our Author then upon his own Ground, as this Right of the Representative is clearly justified upon the Principles of the Constitution, the People ought not to submit to an unconstitutional Check or Controul from the Minister, or those in Authority under him.

I must not omit to take Notice of what he says, touching the Provisions made by divers Acts; which demonstrably prove, according to him, that Surplus and unapplied Monies in the Treasury cannot be drawn thereout by a Vote or Order of the Commons House alone. He has not vouchsafed to mention those Acts, that we might examine them; chusing, as he generally does, to have us take his Word for the Fact. The single Act which he has condescended to quote, the general Duty Act of 1751, is fallacious and inconclusive to maintain his Position. For in the First Place, it goes only to the Surplus arising from the Duties imposed by that particular Act, nor can the Authority of that or any other such Act apply to any other Surplus but that from Duties. In the Second Place, it would seem the Legislature was sensible such Surplus was liable to be appropriated by some other Power than that of the General Assembly, unless a Special Provision prevented it, or otherwise there would have been no Necessity

cessity for such Precaution. Now I believe the other Branch of the General Assembly, I mean the Governor, never yet pretended to the Right, or presumed to dispose of any Money by its sole Authority; therefore it must have been in the Commons House in which the Right of disposing of the Surplus resided, unless the Appropriation were restrained to the General Assembly, by the special Provision of the Act.

But be this as it will, there is a Distinction between the Surplus accruing from Duties and Taxes. As this Distinction militates against his Side of the Question, he chose to suppress it; or it is not within his Knowledge—*Aut dolo malo, aut ignorantia peccat*. In the Duty Act, the whole Amount of the Duties in certain enumerated Articles is given to the Crown; in the Tax Bill, a specific Sum is granted. Should therefore the Duties produce more than was expected, it is vested in the Crown; but the Surplus of the Taxes remains ungranted, is the absolute Property of the People, and therefore disposable by their Representatives. The Case of the Duty Act is insidiously put, and does not in the least apply to the real Question.

Having thus proved, I hope to the Satisfaction of every candid Enquirer, that the Vote of the House on the 8th of December 1769, was

laudable in its Purpose and constitutional in its Mode; or to say the least, not Novel—it cannot but move our Indignation, that any Minister should set this up as an Object for public Contention, to the Impediment of all necessary Business, and the infinite Distress and Disquietude of the People. The Measure was obnoxious we know, it was once in the Power of the Lieutenant Governor to have punished the Trespass if there had been any—in a constitutional Way—but it is past and irretrievable, and it is mere childish Peevishness and Spleen to be angry about it now; the House of Assembly which did the Act, no longer exists, therefore cannot be punished; the Treasurer who furnished the Money is no more, and the Vengeance can only fall on his innocent Posterity. What public Good can this Opposition to an irrevocable Act procure? What private Resentment can it gratify, when the Authors of the Offence are removed from its Reach?

But to do the Contrivers of the additional Instruction Justice, the preventing the Re-payment of the Money advanced on the Faith of the Vote in *December 1769*, is neither the sole nor the principal Intent of the Instruction. That Proceeding was only made a Pretence for abridging the fundamental Rights of the People in their Representatives,



Representatives, by the Minister's usurping the Right of prescribing in what Manner they shall frame Money Bills for the future. The Instruction contains too an arbitrary Injunction (which our Author, with his usual Regard to Truth, softens into a *Provision*) to impose a wanton and rigorous Penalty upon the Treasurer. If the Commons House of Assembly were to send a Money Bill to the Governor, omitting entirely the Provision for the Re-payment of the Money advanced on their Order of 1769, it is plain he would not pass it under this Instruction, unless it were framed precisely according to the Mode which it ordains. It is therefore most clearly an arbitrary Rule of Conduct, prescribed by the the executive Power to the Representative, in a Matter, which, by the Constitution, is solely and exclusively in the Arbitration of the Representative; and in which the Crown cannot interfere, without a manifest Infringement of the Constitution, and a dangerous Violation of their Rights.

The Assembly, in their several Answers to the Governor, have made such sensible Observations on the Nature and Import of this arbitrary Instruction, that they cannot be too often repeated, or too well remembered.

“ Your

“ Your Honor,” they say, “ will excuse our  
 “ differing totally from your Opinion of the  
 “ additional Instruction. We cannot but think  
 “ it as *unnecessary* as it is *unconstitutional*. We did  
 “ not want to be told, that Monies raised by Law  
 “ should be limited by exprefs Words, and not  
 “ by Implication, to the Purpofes for which  
 “ they were raised. Common Sense was fuf-  
 “ ficient to inform us of that. Such a Clause  
 “ never is left out of a Money Bill. The laft  
 “ Clause of every Tax Act is added for that very  
 “ Purpofe ; and the Instruction is therefore ma-  
 “ nifeftly founded on Miftake or Mifinforma-  
 “ tion—his Majesty’s Minifters are fallible as  
 “ well as other Men, and like them are fubject  
 “ to Errors, nay, from their high Rank, are,  
 “ perhaps, of all Men moft liable to Mifinforma-  
 “ tion : And we fhall undertake to prove that  
 “ Instructions have been fent to feveral of the  
 “ *American* Governors, which were diametrically  
 “ oppofite to Reafon, Law, and the Conftitution  
 “ of the Colonies to which they were fent, and  
 “ confequently were not carried into Execution \*.  
 “ Your

\* In 1768 Lord Hillsborough, Secretary of State for the *American* Department, wrote to Mr. Penn, Governor of *Pennfylvania*, to diffolve his Affembly if they would not obey an arbitrary Mandate, which he thought proper to tranfmit to him.

Happily for that Province, the Wifdom of their Founder has pro-  
 tected them from the Poffibility of ever being treated like fuch in-  
 fignificant

“ Your Honor tells us, you shall pay a most  
 “ strict obedience to your Instruction. We thank  
 “ you

significant Puppets. On a certain Day in every Year, the Inhabitants assemble, and choose their Representatives, who meet by their own Adjournment. The Governor has it not in his Power to dissolve, prerogative, or adjourn them, by which Means the People can never be deprived of their constitutional Guardians, by the Orders of a weak or arbitrary Minister. Was it not unpardonable in a Secretary of State to disgrace the Crown by discovering such Ignorance in One of its confidential Servants ?

In 1764 the Governor of *New York* was ordered by his thirty-second Instruction to “ permit and allow Appeals† from any of the “ Courts of Common Law to him, and the Council and he was required for that Purpose to issue a Writ, returnable before him and “ the Council, who were to proceed to hear and determine such Appeal. “ Provided, that in all such Appeals the Sum or Value appealed for do “ exceed three hundred Pounds Sterling. And if either Party should “ not rest satisfied with the Judgment of the said Governor and Council, “ an Appeal was then ordered to be allowed before the King in Council, “ in *England*, provided the Sum or Value so appealed for exceed five “ hundred Pounds Sterling.” This Instruction was attempted to be carried into Execution. But it was soon perceived, that if it were submitted to, the Use of Juries would be entirely destroyed. Appeals would be perpetually made from their Verdicts, by People who were rich enough to bring their Causes to a Country, where Riches, in the Management of a Law-suit, are known not to be useless.

The Chief Justice and the other Judges of the Supreme Court were unanimously of Opinion, that the Instruction ought not to be submitted to. Their Opinions were given in Writing, very fully, and with great Learning, on the Subject. The Purport was, that Obedience should not be paid to the Instruction, because it seemed to aim at

† Not by Writs of Error, for those were always allowed.



“ you for the Franknefs and Candour of this  
 “ Declaration. Permit us, Sir, following your  
 Honor’s

*altering the antient and wholesome Laws of the Land. The farcical Mockery of Justice in the Trial of Sir Francis Bernard, the flagrant Attempt to rob Mr. Penn of his Property in the River Delaware, the Countenance and indecent Applause lately given to a most wicked and impudent Lawyer, who was guilty of a false and malignant Accusation against a worthy and respectable Gentleman, justifies every American for shewing the utmost Reluctance in bringing any Cause before the Privy Council.*

In 1769, by the Death of Sir Henry Moore, at New York, the Government of that Province devolved on Lieutenant Governor Colden, who received considerable Emoluments by granting Lands. Mr. Colden had a very difficult and dangerous Part to act at the Arrival of the Stamp Papers in New York, and alone, among all the Officers of Government employed about that disagreeable Business, conducted himself like a Man of Spirit and Honour. Administration, so far from rewarding his long and faithful Services, attempted to plunder him of that Property which Chance had thrown into his Possession. The Earl of Dunmore, who is Brother-in-law to Lord Gower, was appointed to succeed Sir Henry Moore as Governor of New York, and arrived there the Year following. He carried with him an Order from Lord Hillsborough to possess himself of Half the Salary and Perquisites which Mr. Colden had received.

The Lieutenant Governor, with becoming Spirit, refused to pay Obedience to so unjust an Order, and could not conceive upon what Pretence the Demand was made. It appeared that in the Reign of King William an Instruction had been given to the Governor, to allow Half the Emoluments of the Government to the Lieutenant Governor, whenever he, the said Governor, should be absent from the Province. This Instruction was intended solely for the Benefit of the Lieutenant Governors; who were often left to support the Expence of maintaining the Dignity of their Office, without having any Allowance for it. The Provision therefore made by the Instruction was  
 extremely

“ Honor’s Example, with the same Openness to  
 “ declare, that your Honor cannot be more de-  
 “ voted to the *Will of the Minister* than this  
 “ House is to their Duty, and their most *gracious*  
 “ *Sovereign*, and to the *Interests, Rights, and*  
 “ *Privileges of their Constituents*. That they  
 “ look upon the sole and absolute framing and  
 “ modelling Money Bills to be One of the most  
 “ essential and indispensable of those Rights, and  
 “ that they could not suffer the Interposition of  
 “ any Person or Power whatsoever, in that Mat-  
 “ ter, without basely betraying the Trust re-  
 “ posed in them by the People, and consequently  
 “ injuring the Interest of his Majesty, who has,  
 “ in a Manner becoming a Prince of the House  
 “ of *Brunswick*, declared, *that he has no Interest—*  
 “ *he can have none, distinct from that of his*  
 “ *People*.

“ If the Minister has a Right to interpose and  
 “ direct us *how Money is to be raised*, he must

extremely proper. In this Instance, likewise, the Judges of the Supreme Court gave their Opinions, in Writing, against the Legality of Lord *Hillsborough’s* Order; and the iniquitous Attempt was dropt. Their Conduct, in these two Instances, must be viewed in the most honourable Light, as they hold their Commissions during Pleasure;—a most improper and precarious Tenure.

If all the illegal, unconstitutional, and absurd Orders sent to the *American* Governors from the Beginning of the Administration of the late Duke of *Newcastle* to the End of that of his Pupil the Earl of *Hillsborough*, were collected, a Folio Volume would not contain them.

H

“ have

“ have an equal Right to dictate *the Sum* ; and  
 “ thus the Power of taxing the People will be  
 “ in Effect transferred from their Representa-  
 “ tives to the Minister ; and the Commons House  
 “ of Assembly, instead of being Guardians  
 “ of the Peoples Property, will be made the  
 “ Instruments of oppressing them, like the  
 “ *Roman* Senate under the *Cæsars*, when the  
 “ Emperors, by keeping up the Appearance of  
 “ old Forms, were enabled to carry their Vi-  
 “ olence to a greater Height than they would  
 “ have dared to do in their own Names. Should  
 “ the House submit to the Instruction to which  
 “ your Honor professes to pay such implicit  
 “ Obedience, they could not possibly refuse to  
 “ obey any other. A ministerial Despotism  
 “ would be thereby established, the most  
 “ dangerous Degree of Despotism, that, over  
 “ the Understanding and the Conscience, inas-  
 “ much as we are commanded to act diametri-  
 “ cally opposite to both, and threatened in case  
 “ of Refusal. As we cannot be of Opinion  
 “ that your Honor will in the least advance his  
 “ Majesty’s Interest, by putting a Stop to public  
 “ Business and injuring the public Credit in  
 “ order to enforce an Instruction, which you  
 “ have not attempted to shew is either just, con-  
 “ stitutional, or necessary, or more binding than  
 “ some other Instructions, which your Honor  
 “ and your Predecessors have laid by as dead  
 “ Letters



“ Letters and unregarded, so shall we never  
 “ envy any Glory or Promotion, which you, Sir,  
 “ may obtain by your zealous Endeavours to  
 “ deprive the good People of this Country of  
 “ their most inestimable Rights.”

And now upon due Consideration of the Whole of this Business, I presume no Reader can remain unconvinced, that the Pretence on which this Instruction was grounded, namely the Illegality of the Vote of *December 8th, 1769*, is false, frivolous, and unjust—that the Instruction itself is an arbitrary and dangerous Interposition of Prerogative, prescribing that which is not within the Limits of its Controul, the Mode of framing Money Bills, trenching deeply on the dearest Rights of the People, and attempting to convert the Power of the Representative from being a Protection to the Property of their Constituents, into an Instrument of Extortion in the Hands of the Crown. Were it possible, that a House of Assembly should be so lost to every Sense of their Duty to the People, and of their own Dignity, Privileges, and Interests, as to submit to this Usurpation; then indeed would the  
 “ Represented be in a State of absolute Vassal-  
 “ age and ruinous Dependence;”—then, indeed, would the People feel the Truth of that received Maxim in Politics, *That no Tyranny is more*

*grievous, than a Tyranny under the Form of Law.*

That the Minister should persist in an Attempt so indefensible and so unconstitutional is not surprising in these Times. When the Study of Ministers is to invade the Liberties of the People, especially in *America*, and therefore, that the Governor should be so forward in his Zeal to obey an Instruction, productive of such detrimental Effects, is as little to be wondered at. Nor is it yet more wonderful, that so pernicious an Usurpation should be countenanced by the Council, when we consider that the Business is generally done by a small Junto, under the Direction of a Man desperate in Fortune, abandoned in Principle, and ruined in Reputation. To all the strong Representations which have been made here, to all the irrefutable Facts, and irrefragable Arguments which have been produced on the Part of the Assembly, no Answer has been returned, but that which graces the Edicts of France, *tel est nostre plaisir, such is our Will and Pleasure*. Sic Volo, sic Jubeo—stat pro ratione Voluntas. Yet we are now insulted with being told, that “after the most gracious Con-  
 “descension on the King’s Part, to the ardent  
 “Wishes of the Commons House of Assembly,  
 “the said Instruction having been ratified and  
 “confirmed

“ confirmed on a Revision of the Merits, it is the  
 “ most unpardonable Presumption to look for  
 “ farther Concessions from the Crown.”

The King's Ministers have “ *condescended*” to refuse all Relief to the Grievances and Complaints of the People, to persevere in a Measure founded on Misrepresentation, and to subject the whole Province to all the Distress that arises from a Suspension of public Business. The People hardly wish to be distinguished by any more such “ Marks of “ Royal Favor,” and it would indeed be unpardonable Presumption in them to look for any farther “ gracious Concessions from the Crown.” Far from such Exorbitancy, they wish only for the quiet Enjoyment of what are their undoubted Privileges; nor is there any one among them so weak as not to know, that the only remaining Hope of Redress is in a manly and immoveable Assertion of their just Rights, till Time shall have dispelled the thick Cloud, which the Counsels of evil Ministers have spread before the Eyes of their most gracious Sovereign, against his loyal Subjects; and Measures shall be again modelled by Truth and Justice.

Let us now listen to the Logic of our Author in defining what this Instruction is.

“ It



“ It is,” says he, “ by Way of *Check*,—must be viewed in the Light of a *timely Correction*, by “ the executive Power—as a *Call* and *Admonition* “ to a Third Branch of the Legislature,”—and at last it comes out to be, “ no more than the “ Exercise of that Act of Sovereignty given “ the Crown by the Constitution, for the Purpose of maintaining the just Balance of the “ State \*.” First it is a *Check*, then it rises into *Correction*, then it sinks into an *Admonition*, and at last falls softly down into the *gentle and benign Exercise of constitutional Power*. Thus, like *Polonius’s* Cloud, it is a Camel, a Whale, an Ouzle, or any Thing that may serve his Purpose. But, as it often happens, while he endeavours to entrap others, he entangles himself. He acknowledges that “ it was given as a Rule of “ Conduct to the several Branches of the Legislature §;” from which it follows inevitably, that it is unconstitutional, because the King confessedly has no Right to direct, instruct, or dictate to either Branch of the Legislature, for if he had, then would the mutual Check and Balance, which he admits, from *Blackstone*, to be the very Essence of the Constitution, cease and be destroyed. This Instruction is therefore upon his own Admission, “ a Departure from acknowledged Principles,

\* P. 35.

§ P. 16.

“ contain-

“containing new-fangled Ideas not warranted  
 “by, or known to the Constitution ‡.” To  
 compel Obedience to this Infringement on the  
 Constitution, it is in Effect said, you must sub-  
 mit to the Rule prescribed for giving and grant-  
 ing your own Money to the Use of those who  
 have robbed you of your Liberty, or you know  
 the Alternative—no Assemblies, no Laws, no  
 Treasure,—public Business interrupted, public  
 Engagements violated, public Faith infringed.  
 —Anarchy and Distress shall attend your  
 Struggles for Rights and Privileges.—The Pre-  
 rogative given for the Good of the People, shall  
 be employed to insult and abuse their Representa-  
 tives. Assemblies shall be called (*if at all*) to  
 a Corner of the Country, distant and dan-  
 gerous—detained in an inclement Season, at  
 the Hazard of Health and Life—insulted with  
 a childish Speech; and, for fear of a Reply, im-  
 mediately prorogued to the usual Place—and  
 finally to deprive them of the Opportunity of  
 complaining in a constitutional Manner of such  
 insolent and injurious Treatment, they shall be  
 dissolved. The following authentic Papers will  
 at once prove the Possibility of such an injurious  
 Outrage; and the Moderation with which the  
 Assembly resented it.

*Lord Charles Montague having returned to his Government, called the Assembly to meet him at Beaufort, a Village upon an Island 70 Miles distant from the Seat of Government—and after detaining the Members Three Days in Suspense made the following remarkable Speech—*

“HONORABLE GENTLEMEN,

“*Mr. Speaker and Gentlemen of the Commons House of Assembly,*

“**M**Y constant Attention to preserve the Laws of this Province from Violation was the *only Cause* of my calling the General Assembly at this Time.

“My Knowledge of the Situation of Affairs in this Country, and of her real Interests, and my ardent Wishes to promote them, induced me to summon this General Assembly to meet in this Town.

“I have exercised, and shall continue to exercise the royal Prerogative in such a Manner as in my Opinion may promote his Majesty’s Service and the general Advantage of the People over whom I have the Honor to preside: And while I am cautious in the most  
“extreme



“ extreme Degree that I do not violate the  
 “ Laws. I shall be perfectly satisfied with my  
 “ Conduct so long as I exercise such Powers only  
 “ as are constitutional: Such I shall always ex-  
 “ ercise with the best Intentions, and with a  
 “ corresponding Firmness.

“ A long Space of Time having elapsed since  
 “ the Inhabitants of this Province have received  
 “ Benefit from the Deliberations of a Commons  
 “ House of Assembly, many salutary Laws  
 “ have expired, and others are near expiring,  
 “ which ought to be revived and continued;  
 “ the People have not acquired such new Laws  
 “ as recent Circumstances have rendered neces-  
 “ sary; and the public Creditors, for Years past,  
 “ are yet unpaid their just Demands.

“ I wish the Commons House of Assembly  
 “ may remember that a Delay of Justice is a  
 “ Denial of Justice.—Being sensible of the only  
 “ Cause of the late public Dissentions, and of  
 “ the Inconveniencies and Distress with which  
 “ this Province is loaded, I cannot but most sin-  
 “ cerely lament the distressed Situation of our  
 “ public Affairs: And as there is not any In-  
 “ stance of a lawful House of Commons having  
 “ ever appropriated, and caused Money to be  
 “ issued for public Services, of their sole Au-  
 “ thority,

“ thority, and against the Consent of the other  
 “ Branches of the Legislature, or even having at  
 “ any Time claimed such a Power, so, upon  
 “ the Principles of our Constitution, of Law,  
 “ and of Reason, it cannot be allowed that any  
 “ Commons House of Assembly of this Province  
 “ can or ought to have any such Power.

“ Careful as I am not to invade the constitu-  
 “ tional Rights of a Commons House of Assem-  
 “ bly, it is my indispensable Duty to endeavour  
 “ to preserve to each Branch of the Legislature  
 “ its native Powers of Legislation; and I do  
 “ earnestly wish that the weighty Affairs of this  
 “ Province may be deliberated upon and trans-  
 “ acted with that truly patriotic Spirit, which  
 “ can, with Magnanimity, condemn and aban-  
 “ don any Measure that is an Alien to, incom-  
 “ patible with, and destructive of the Rights  
 “ and Powers of that Mode of Legislation from  
 “ which our own is modelled, and from which  
 “ alone the People of this Province derive all  
 “ their Liberties as *English* Subjects, and all  
 “ those Rights, Privileges, and Powers of Le-  
 “ gislation which can be legally exercised by  
 “ their Representatives in General Assembly.  
 “ By as much as you all prize and value the  
 “ Rights of *English* Subjects, by so much let it  
 “ be your Care to demonstrate by Acts, which  
 “ are of much more Consequence than Words,

“ a due Veneration of that Form and Spirit of  
 “ Government which has granted, and now  
 “ regulates and preserves those invaluable Privi-  
 “ leges to the Inhabitants of the Province.

“ As it is your Interest to preserve the *English*  
 “ Spirit of Government, so it is your Interest to  
 “ preserve to each Branch of the Legislature such  
 “ Powers as are peculiar or common to each.  
 “ In this Case, the safest Means to preserve the  
 “ Constitution is to maintain each particular Part  
 “ of it inviolate. Innovations are dangerous,  
 “ they are, in general, sure to create Conten-  
 “ tions, which, unhappily for Mankind, too of-  
 “ ten make quick Progress to Anarchy.

“ Wherefore, let me recommend to you, in  
 “ the strongest Terms, that you be careful to  
 “ endeavour to annihilate any Innovation, which,  
 “ by violating constitutional Privileges of Legis-  
 “ lation, thereby evidently tends to destroy that  
 “ happy Poise of Power which is the peculiar  
 “ Characteristic and Palladium of Legislature,  
 “ founded upon and assimilated as nearly as may  
 “ be to Principles of *British* Legislation; the  
 “ constitutional Spirit of which is so admirably  
 “ tempered and compounded, that nothing can  
 “ endanger or hurt it, but Attempts and Inno-  
 “ vations calculated to destroy the Equilibrium



“ of Power between one Branch of the Legisla-  
 “ ture and the Rest.

“ The Commons House of Assembly claiming  
 “ to issue Moneys for public Services of their  
 “ sole Authority, has so alarming a Tendency,  
 “ that it cannot be too anxiously guarded  
 “ against—such a Measure is evidently capable  
 “ of destroying and overturning every funda-  
 “ mental Principle of that Constitution of  
 “ Government, which is the Envy of admiring  
 “ Nations.—To persist in such an unconstituti-  
 “ onal Claim would be in Effect to declare a  
 “ Design to acquire a Power which is incon-  
 “ sistent with the *English* Constitution; a Mea-  
 “ sure, which in the natural Consequences of  
 “ Things is pregnant with the most formidable  
 “ and certain Dangers to the true Interests of  
 “ the People of this Province; but to annihilate  
 “ an unconstitutional Claim is most virtuous and  
 “ most honorable—such a Proceeding is the  
 “ most infallible Criterion of a true Patriot and  
 “ a wise Senator.

“ By such a Conduct you will in the most  
 “ laudable Manner discharge your Duty to  
 “ your King, to your Country, and to your-  
 “ selves.

“ I am

“ I am willing to hope for such a distinguish-  
 “ ing Proof of true Patriotism from this Com-  
 “ mons House of Assembly : Such a Conduct  
 “ will of course render the Exercise of unusually  
 “ exercised Prerogatives unnecessary, which, al-  
 “ though to a few Persons they may be dis-  
 “ pleasing Remedies, to operate against the Dis-  
 “ order of the State, are not therefore the less  
 “ legal or inadequate to effect their ultimate  
 “ End, the Good of the People.

“ At this my First Meeting with this General  
 “ Assembly, I chuse to deliver my Sentiments  
 “ thus fully and candidly, upon a Point of so  
 “ high Consequence as the Preservation of our  
 “ Legislative Powers in their native Force.  
 “ With the best Intentions for the public Service  
 “ I do recommend this most serious Subject to  
 “ your most attentive Consideration. I shall at  
 “ all Times give every Encouragement in my  
 “ Power to engage you to proceed to the Con-  
 “ sideration of public Affairs with that Temper,  
 “ Candour, and Benevolence which must natu-  
 “ rally prevail in public Deliberations when the  
 “ public Good is truly understood, and is really  
 “ meant to be promoted : And as I have now  
 “ Reason to think that the speedy Sitting of the  
 “ General Assembly in *Charles Town* may induce  
 “ such Deliberations ; and I pledge myself to  
 “ you,

“ you, that at all Times I shall exercise my  
 “ Authority in such Manner as I may think  
 “ will have a Tendency to induce such Deliberations as may be of public Benefit: I do  
 “ prorogue this General Assembly to the Twenty-second Day of this instant *October*, to be then  
 “ held at the usual Place in *Charles Town*, and  
 “ this General Assembly is accordingly prorogued.—

“ CHARLES GREVILLE MONTAGUE.”

“ *Beaufort*, October 10th 1772.

Coupling his Lordship's Declaration in the first and last Paragraph of this Standard of Language, Wisdom and Policy, is all the Comment that I shall make.

“ My Knowledge of the Situation of Affairs in  
 “ this Country, and of her real Interests, and my  
 “ ardent Wishes to promote them, induced me  
 “ to summon this General Assembly to meet in  
 “ *this Town (Beaufort)*—and as I have now  
 “ Reason to think that the speedy Sitting of the  
 “ General Assembly in *Charles Town* may induce such Deliberations as may be of public  
 “ Benefit, I do prorogue the General Assembly  
 “ to the 22d *October* instant, to be then held at  
 “ the usual Place in *Charles Town*.”

The



The Reader is referred to the following Report of the Committee on Grievances, for the Sense of the Assembly upon this extraordinary Occasion.

## R E P O R T.

“ **T**HAT they have considered the several  
 “ Matters referred to them the 22d and  
 “ 24th instant by the House; and though the  
 “ Committee are of Opinion, that the Governor’s  
 “ calling the Assembly to *Beaufort*, keeping them  
 “ there Three Days, without permitting them  
 “ to do any Business, and proroguing them  
 “ on the very Day, that by Law, was the last  
 “ that the General Assembly could be discontinued, were such Measures as call for the utmost  
 “ Resentment of this House, and would well justify  
 “ their coming immediately to a Resolution to do  
 “ no Business with his Excellency, until he had  
 “ given them Satisfaction in the Premises. Yet  
 “ as the People have been long deprived of the  
 “ Benefit of Representation, and his Majesty’s  
 “ Service and the Interest of the Colony require  
 “ the immediate Sitting and Proceeding of the  
 “ General Assembly on the arduous Affairs of  
 “ our Country, the Committee therefore recommend, that the House do not carry Matters  
 “ to that Extremity, but that they enter into  
 “ the following Resolutions, (*viz.*)

“ **RESOLVED,**

“ RESOLVED, That as this House did not exist  
 “ when his Excellency formed his Plan of calling  
 “ the General Assembly to *Beaufort*, his Excel-  
 “ lency’s Proceeding seems to be founded upon  
 “ his ill Will to the Body of the Freemen of  
 “ this Province, inasmuch as he thereby shewed  
 “ his Purpose of injuring and affronting whom-  
 “ soever the Freeholders of the Colony should  
 “ chuse to represent them.

“ RESOLVED, That his Excellency’s calling  
 “ the General Assembly to *Beaufort*, a Place  
 “ very distant from *Charles Town*, where such  
 “ Assemblies have always been held (except  
 “ when malignant and contagious Disorders  
 “ raged therein) where all the public Offices and  
 “ Records are kept, at a Time highly dangerous  
 “ to the Health, and inconvenient to the private  
 “ Affairs of the Members, was a most unpre-  
 “ cedented Oppression, and an unwarrantable  
 “ Abuse of a Royal Prerogative, which hath  
 “ never been questioned by the People of this  
 “ Colony.

“ RESOLVED, That the Governor’s keeping at  
 “ *Beaufort* the fullest House that ever met at the  
 “ Beginning of any Session, Three Days before  
 “ he would receive them with their Speaker, and  
 “ then immediately proroguing them, was add-  
 “ ing

“ ing Insult to Injury, and plainly manifested  
 “ his Contempt of the People’s Representatives.

“ RESOLVED, That his Excellency’s pro-  
 “ roguing the General Assembly, without suffer-  
 “ ing them to sit One Moment as a Legislative  
 “ Body, was at least an Evasion, if not a di-  
 “ rect Violation of the Election Law, which  
 “ enacts, That the Sitting and Holding of the  
 “ General Assembly shall not be discontinued  
 “ or intermitted above Six Months, that Time  
 “ being entirely expired when his Excellency pro-  
 “ rogued the House.

“ YOUR COMMITTEE recommend, that the  
 “ Agent be ordered to make the strongest Re-  
 “ presentations to his Majesty of the arbitrary  
 “ and oppressive Proceedings of the Governor,  
 “ and to use his utmost Endeavours to procure  
 “ the Removal of his Excellency from this  
 “ Government, or such other Marks of his  
 “ Majesty’s Royal Displeasure as may prevent  
 “ Governors for the future from thus oppressing  
 “ the People, by abusing those Prerogatives  
 “ which were intended for their Benefit.

“ AND as his Excellency’s Speech at *Beaufort*  
 “ seems wholly calculated to throw the Blame of  
 “ all the Inconveniences which the Public labours

K

“ under



“ under upon *the Assembly*, and charges them with  
 “ making unconstitutional and unprecedented Claims ;  
 “ your Committee are of Opinion it ought not to pass  
 “ unnoticed by the House, and therefore recommend  
 “ the following Message in Answer thereto :

“ May it please your EXCELLENCY,

“ The calling the Assembly at *Beaufort* was  
 “ such an extraordinary Exertion of the Royal  
 “ Prerogative, and your Excellency's Conduct  
 “ there was so unprecedented, that the House  
 “ could not but suppose your Excellency must  
 “ have had very cogent Reasons for the Measures  
 “ you were pleased to pursue on that Occasion.  
 “ But when we humbly addressed your Excel-  
 “ lency to lay your Reasons before us, that we  
 “ also might see the Benefit which was to arise  
 “ to the Public from the unusual Exercise of  
 “ Prerogative, your Excellency, to our great  
 “ Concern, was pleased to refer us to your Speech,  
 “ in which no Reason appears, but your Ex-  
 “ cellency's Will and Pleasure.

“ The House therefore cannot avoid taking  
 “ up the Consideration of those Proceedings of  
 “ your Excellency, lest they should be drawn  
 “ into Precedent, and future Governors should  
 “ attempt to put a Stop to all Freedom of De-  
 “ bate, by harrassing the Representatives of the  
 “ People

“ People from Place to Place, to the Destruction  
 “ of their Healths and Ruin of their Fortunes,  
 “ attended with the Inconvenience, Expence,  
 “ and Danger of removing such Books and Re-  
 “ cords as are absolutely necessary to the House  
 “ of Assembly, until the Members be either  
 “ wearied into Compliance, or the Difficulty of  
 “ Attendance deter Gentlemen from serving in  
 “ the Assembly.

“ In the Beginning of your Excellency’s  
 “ Speech, you are pleased to inform us, that  
 “ your constant Attention to preserve the Laws  
 “ of the Province from Violation, was the only  
 “ Cause of your calling the General Assembly  
 “ at that Time; we presume your Excellency  
 “ means the Election Law, by which the Calling  
 “ and Sitting of the Assembly cannot be inter-  
 “ mitted more than Six Months: It is impos-  
 “ sible to say how much we are mortified by  
 “ this Declaration. Were then neither your  
 “ Excellency’s ardent Wishes to promote the  
 “ real Interest of this Country and his Majesty’s  
 “ Service—Were not the many Hardships and  
 “ Injuries which the People of this Colony, and  
 “ particularly the public Creditors, labour under,  
 “ for Want of the Deliberations of the General  
 “ Assembly, and which your Excellency so  
 “ strongly paints in your Speech, nor even the

“ Consideration that *a Delay of Justice was a*  
 “ *Denial of Justice*—Were not all these suffi-  
 “ cient to induce your Excellency to call a  
 “ General Assembly, unless the Law had com-  
 “ pelled it ?

“ Pardon us, Sir, if your Excellency’s most  
 “ extreme Caution, not to violate the Laws, is  
 “ not so apparent to us, even upon this Occasion,  
 “ as we could wish ; we can by no Means think  
 “ that a bare Calling of a General Assembly  
 “ within the utmost Limitation of the Time  
 “ prescribed by Law, and proroguing them  
 “ without permitting them to sit even for a Mo-  
 “ ment, can be such a Calling and Sitting as  
 “ the Letter, much less the Spirit and Intention  
 “ of the Law, require.

“ Your Excellency declares your entire Satis-  
 “ faction in your Conduct upon that Occasion.  
 “ Sir, be pleased to excuse our being of a dif-  
 “ ferent Opinion. However, we shall enter  
 “ into no Altercation on that Subject ; but shall  
 “ appeal to our most gracious Sovereign, not  
 “ doubting that he will prevent his Governors  
 “ for the future from misusing his Prerogative  
 “ to the Injury of his People.

“ No



“ No Inconveniences to which the good  
 “ People of this Province have been subjected,  
 “ can by any Means be imputed to their Re-  
 “ presentatives, who have ever expressed the  
 “ utmost Readiness to do their Parts; but to  
 “ those who rejected their Bills, and denied them  
 “ Liberty to sit.

“ We are at a Loss to understand how your  
 “ Excellency can with any Propriety apply to  
 “ to this House, what your Excellency mentions  
 “ about a lawful House of Commons; at any  
 “ Rate it cannot concern the present House,  
 “ who had then neither claimed or used any  
 “ Right or Privilege, other than those usually  
 “ demanded by the Speaker. And we know  
 “ of no other Claim made by any late House,  
 “ nor by former Houses, that has not at least  
 “ the Sanction of long Usage.

“ We heartily join in your Excellency's earnest  
 “ Wish, and shall do every Thing in our Power,  
 “ that the weighty Affairs of this Province may  
 “ be deliberated upon and transacted with that  
 “ truly patriotic Spirit, which can with Magnani-  
 “ mity condemn and abandon any Measure that  
 “ is incompatible with, or destructive of, the Rights  
 “ and Powers of that Mode of Legislation, from  
 “ which

“ which our own is derived. Should your Excel-  
 “ lency really join us here, and demonstrate by  
 “ Acts (which indeed are of much more Conse-  
 “ quence than Words) a due Veneration of, and a  
 “ Compliance with, the true Spirit of the *English*  
 “ Government, all our Disputes must be at an End,  
 “ for the only Claim which has prevented the  
 “ public Business of late, is that most unreason-  
 “ able and unconstitutional one of the Ministry,  
 “ to direct and controul the House of Assembly  
 “ in framing Money Bills; a Claim so glaringly  
 “ inconsistent with the Rights of the House, that  
 “ the Ministry themselves do not attempt to sup-  
 “ port the Propriety of it to our Agent. Yet upon  
 “ this Matter alone, as does most clearly appear  
 “ by the Journals, your Excellency was pleased to  
 “ dissolve the last House of Assembly, and to re-  
 “ duce the Colony to the distressed State it now  
 “ stands in, and from which we hope your Excel-  
 “ lency now means to deliver it by magnanimously  
 “ supporting the Rights of the People, by pre-  
 “ serving inviolate to each Branch of the Legisla-  
 “ ture such Rights and Powers as are peculiar  
 “ to it.

“ To annihilate an unconstitutional Claim, as  
 “ your Excellency observes, is most virtuous and  
 “ honorable; such a Proceeding is the most in-  
 “ fallible

“ fallible Criterion, as well of a truly patriotic  
 “ Governor as a wise Senator.

“ Your Excellency condescends to inform the  
 “ House, that the Conduct above described will  
 “ of course render the Exercise of unusually ex-  
 “ ercised Prerogatives unnecessary, which Words  
 “ the House presume are meant as a Threat, at  
 “ least against a few Persons among them. The  
 “ House humbly pray your Excellency to do them  
 “ more Justice, than to suppose that any Oppres-  
 “ sions to which a conscientious Discharge of their  
 “ Duty may subject them, can or will ever induce  
 “ them to depart in the minutest Degree from the  
 “ Rights and Privileges of the People, or betray  
 “ the Trust reposed in them.

“ Your Excellency tells us, that you shall at  
 “ all Times give every Encouragement in your  
 “ Power to engage us to proceed to the Con-  
 “ sideration of public Matters, with Temper,  
 “ Candour, and Benevolence. Can your Excel-  
 “ lency possibly suppose, that your calling the  
 “ General Assembly at *Beaufort*, and your Con-  
 “ duct there, were Measures that could by any  
 “ Means tend to produce Temper and Benevo-  
 “ lence? Surely not, unless your Excellency sup-  
 “ poses the People to be thereby so intimidated,  
 “ as to be afraid to support their own Privileges.

“ — Sufi.



“ —Sufficient be it to say, that the House are  
 “ not so irritated as to put any Stop to public  
 “ Business, upon which they are ready and will-  
 “ ing to proceed with all possible Dispatch.”

To reconcile Men’s Minds to these outrageous Proceedings, they are told by the Author—“ that  
 “ no Part of the King’s Dominions can be in-  
 “ jured by this local Difference, nor is the great  
 “ Machine of Government in the least affected  
 “ by it; the Punishment is as local as the Dis-  
 “ pute itself; the People of the Colony alone  
 “ suffer in the Cause, which no wise Man can  
 “ think a good one \*.”

Such is the unprecedented Manner in which the People have been insulted, their Distresses ridiculed, their Complaints mocked, their Liberties invaded, The Machinations of a Governor and a corrupt Council have delivered them up a grateful Victim to the Vengeance of that odious Minister, whose puerile circular Letter they treated with the Contempt it deserved.

I should not condescend to take Notice of the Stuff in this Pamphlet concerning the Bill of Rights, were it not founded on a gross and impudent Falshood. “ I have not been able to

\* P. 30.

“ learn,

“ learn, says the Writer, what the venerable  
 “ Supporters seriously thought in relation to  
 “ this Gift. That they laughed at it and enjoyed  
 “ the Joke, I can easily suppose: That they  
 “ passed a Sneer upon it and pronounced it  
 “ an *idle Affair*; that they ridiculed the Credulity  
 “ of the Donors, and admired their Faith,  
 “ I can easily believe; but it is not possible to  
 “ carry our Conjectures any farther.—It is curious  
 “ to reflect, that the *Silence* is equally as  
 “ *fullen*, on one Side of the Water, as it is on  
 “ the other. I cannot learn from Authority,  
 “ that even the *unavailing Tribute* of Thanks  
 “ has been returned for all this *legislative Kind-*  
 “ *ness* \*.” The following excellent Letter from  
 the Society of the Supporters of the Bill of  
 Rights will, if any Thing can, put this Wretch to  
 Shame, and prove at once their grateful Sense of  
 the laudable Attention of the Assembly to the  
 noble Cause they were supporting, and the common  
 Interest of both Countries in the Success of  
 their Endeavours.

\* P. 31.

To the Honourable the Commons House of Assembly  
of South Carolina.

“ GENTLEMEN,

“ WE are directed by the Society, Supporters  
“ of the Bill of Rights, to transmit to  
“ you their Thanks for the very honorable  
“ Testimony you have at once given of your  
“ own Sentiments, and of your Approbation of  
“ their Conduct.

“ The same Spirit of Union and mutual Assist-  
“ ance, which dictated your Vote in our Favour,  
“ animates this Society. We shall ever consider  
“ the Rights of all our Fellow Subjects through-  
“ out the *British* Empire, in *England*, *Scotland*,  
“ *Ireland*, and *America*, as Stones of one Arch on  
“ which the Happiness and Security of the Whole  
“ are founded. Such would have been our Princi-  
“ ple of Action, if the System of Despotism,  
“ which has been adopted, had been more art-  
“ fully conducted; and we should as readily have  
“ associated in the Defence of your Rights, as  
“ our own, had they been separately attacked.

“ But Providence has mercifully allotted to  
“ depraved Hearts weak Understandings: The  
“ Attack has been made by the same Men, at  
“ the same Time, on both together, and will  
“ serve only to draw us closer in one great Band  
“ of mutual Friendship and Support.

“ Whilst



“ Whilst the *Norman* Troops of the First  
 “ *William* kept the *English* in Subjection, his *En-*  
 “ *glish* Soldiers were employed to secure the Obe-  
 “ dience of the *Normans*. This Management  
 “ has been too often repeated now to succeed.

“ There was a Time when *Scotland*, though  
 “ then a separate and divided Nation, could avoid  
 “ the Snare, and refused, even under their own  
 “ *Stuarts*, to enslave their antient Enemies. The  
 “ Chains which *England* and *Scotland* disdain to  
 “ forge for each other, *England* and *America* will  
 “ never consent to furnish.

“ Property is the natural Right of Mankind;  
 “ the Connexion between Taxation and Repre-  
 “ sentation is its necessary Consequence. Our  
 “ Cause is one—our Enemies are the same. We  
 “ trust our Constancy and Conduct will not dis-  
 “ fer. Demands which are made without Autho-  
 “ rity should be heard without Obedience.

“ In this, and in every other constitutional  
 “ Struggle, on either Side of the *Atlantic*, we wish  
 “ to be united with you; and are as ready to  
 “ give as to receive Assistance.

“ We desire you, Gentlemen, to be persuaded,  
 “ that under all our domestic Grievances and Ap-  
 “ prehen-

“prehenſions, the Freedom of *America* is our pe-  
 “culiar Attention; and theſe your public Act  
 “and ſolemn Engagement afford us a pleaſing  
 “Prefage, and confirm our Hopes, that when  
 “Luxury, Miſrule, and Corruption, ſhall at  
 “length, in Spite of all Reſiſtance, have deſtroyed  
 “this noble Conſtitution here, our Poſterity will  
 “not, like your gallant Anceſtors, be driven to  
 “an inhospitable Shore, but will find a welcome  
 “Refuge, where they may ſtill enjoy the Rights  
 “of *Engliſhmen* amongſt their Fellow Subjects,  
 “the Deſcendants and Brothers of *Engliſhmen*.

“We are, Gentlemen,

“With the greateſt Reſpect,

“Your moſt obedient Servants and  
 “affectionate Fellow Subjects,

JOHN GLYNN, *Chairman.*

RICHARD OLIVER, }  
 JOHN TREVANION, } *Treasurer.*

ROBERT BERNARD, }  
 JOSEPH MAWBAY, }  
 JAMES TOWNSEND, } *Committee.*  
 JOHN SAWBRIDGE, }

I ſhall cloſe the Conſideration of this per-  
 nicious Inſtruction, and of the Proceedings of  
 the Governor and Council upon it, with an ex-  
 cellent Obſervation from Mr. Juſtice *Blackſtone*.  
 “Whoever will attentively conſider the *Engliſh*  
 “History,

“ History, may observe, that the flagrant Abuse  
 “ of any Power, by the Crown or its Ministers,  
 “ has always been productive of a Struggle,  
 “ which either discovers the Exercise of that  
 “ Power to be contrary to Law, or, if legal,  
 “ restrains it for the future \*.”

We come now to the Consideration of a Question, most singular in its Nature, and important in its Consequence. It was not enough that his Majesty's Council of State, under the Influence of a factious and flagitious Leader, should have presumed to controul the Representatives of the People in their antient, essential, and undoubted Right of granting their own Money, and should have countenanced an arbitrary and unconstitutional Attempt to subject the House of Assembly to the Dictation of a Minister in framing Money Bills—but this Council, dependent as it is, must assume the Powers of a Branch of the Legislature, which are competent only to an absolutely independent Body; and, on the Pretence of those Powers, usurp and exercise a dangerous Authority over the Freedom of the Press, and the personal Liberty of the Subject. The Origin of this Question was as follows :

A Member of the Council had protested against some of their Proceedings, and gave a Copy of

\* Comment. Vol. iii. P. 135.

that

that Protest to the Printer, to be inserted in his Paper. The Protest was printed accordingly. The Council voted the Printer guilty of a high Breach of Privilege and Contempt of their House, and for this Offence committed him to Gaol. Upon this Commitment, the Printer sued out a Writ of *Habeas Corpus* before Two Justices, the Honorable *Rowlins Lowndes*, Speaker of the Commons House of Assembly, and *G. Gabriel Powel*, Esquire, a Member of that House. Upon full Consideration of the Cause of the Commitment, and the Power by which it was made, the Justices judged it illegal, and discharged the Prisoner. The Law and Reason of that Adjudication are so ably laid down in the Opinion of Mr. *Lowndes* upon the Trial, an Opinion which would do Honour to the most learned Judge in *England*, that it is with Pleasure I present it to the Reader,

### The Honorable Mr. LOWNDES.

“ IT appears by the Sheriff’s Return of *Habeas Corpus*, that the Prisoner, *Thomas Powell*,  
 “ stands committed by virtue of a Warrant, dated  
 “ *August 31, 1773*, from Sir *Egerton Leigh*, Pre-  
 “ sident of the Council, said to be by Order of the  
 “ Upper House of Assembly, for that he had ac-  
 “ knowledged



“ knowledged himself to be the Printer and Pub-  
 “ lisher of a News-paper called *The South Carolina*  
 “ *Gazette*, Numb. 1966, dated *Charles Town*,  
 “ *Monday* the 30th Day of *August* 1773, in which  
 “ Paper is printed Part of the Proceedings of  
 “ that House on *Thursday* the 26th Day of *August*  
 “ last, which the House hath resolved to be  
 “ a high Breach of Privilege, and a Contempt  
 “ of the House, and ordering that the said *Thomas Powell*  
 “ should be therefore committed to  
 “ the Common Gaol of *Charles Town*, during  
 “ the Pleasure of the House.

“ I am sorry that this Matter hath come be-  
 “ fore me, and that I am obliged to decide upon  
 “ the Legality of the Commitment. It involves  
 “ in it a Question of Consequence. If, on the  
 “ one Hand, the Commitment should be deem-  
 “ ed illegal, the Council will so far be deprived  
 “ of a Power of Commitment for Breach of  
 “ Privilege. If, on the other Hand, the Com-  
 “ mitment should be deemed legal, the Prisoner  
 “ will be restrained of his Liberty, which is one  
 “ of the greatest Punishments, next to corporal,  
 “ that can be inflicted on the Subject. I should  
 “ be extremely sorry to err either Way. I  
 “ would gladly have declined the Task, and  
 “ wish from my Heart some abler Magistrate  
 “ had been applied to.

“ From

“ From the Rank and Station I am in, and  
 “ from my Connection with the Commons House  
 “ of Assembly, I may be presumed to be under  
 “ some Bias and Prepossession in Favour of that  
 “ House and its Privileges. I confess I am so,  
 “ but I trust it is no undue Bias or Prepossession;  
 “ no Propensity to exclude from any other  
 “ Body of Men, or any other Part of the Community,  
 “ any Rights, Privileges, or Immunity  
 “ whatever, which they may, on a fair Inquiry,  
 “ be found to be intitled to. It was *insisted*  
 “ however, that I should grant the *Habeas Corpus*,  
 “ that it was a Writ of Right; and it would  
 “ very ill have become me, to have been disobedient  
 “ to so good and salutary a Law, although  
 “ it had not been enforced with such penal Sanctions  
 “ as it has to secure its Execution.

“ The Laws of the Land provide for the  
 “ Safety of every Man’s Person, his Liberty,  
 “ and his Estate. By the Great Charter it is  
 “ provided, that no Freeman shall be taken or  
 “ imprisoned, but by the lawful Judgment of  
 “ his Equals, or by the Law of the Land. And  
 “ many subsequent Statutes expressly direct,  
 “ that no Man shall be taken or imprisoned by  
 “ Suggestion or Petition to the King, or his  
 “ Council, unless it be by legal Indictment, or  
 “ the Process of the Common Law. By the Pe-  
 “ tition

" titution of Rights it is enacted, That no Free-  
 " man shall be imprisoned or detained without  
 " Cause shewn, to which he may answer accord-  
 " ing to Law: And, by the *Habeas Corpus* Act  
 " of the 31st Char. II. the Methods of obtaining  
 " that Writ are pointed out and enforced: All  
 " which Statutes, for the Security of the Liberty  
 " of the Subject, and expressly made of Force,  
 " here, particularly the *Habeas Corpus* Act,  
 " which, by an Act of Assembly of this Province  
 " passed in 1712, is more particularly accommo-  
 " dated to our local Circumstances, and some  
 " Difficulties removed which might otherwise  
 " have obstructed the Execution of that whole-  
 " some Law. It is in virtue of this Provincial  
 " Law, that we were impowered to issue the  
 " *Habeas Corpus* which we did in this Case, and  
 " are impowered to take Cognizance of the pre-  
 " sent Matter.

" It appears then, that no Freeman shall be  
 " taken or imprisoned, but by the Judgment of  
 " his Peers, or by the Law of the Land. No  
 " Judgment of his Peers has been given in the  
 " present Case against Mr. *Powell*, for Judg-  
 " ment by his Peers means a legal Course of  
 " Trial by Jury. It remains then to be inquired  
 " into, whether the Law of the Land warrants  
 " his Commitment, and consequently Imprison-

M

" ment?

ment ? And whether the Cause shewn is sufficient to authorize his Detention ? or whether, if his Commitment is legal, he is bailable or not bailable ?

“ Either House of Parliament have, from Time immemorial, exercised a Power of Commitment and Imprisonment : And it seems to be a settled Point, confirmed by late Adjudications, that the Courts of Law, or Judges, will not interfere or intermeddle in any Case, so as to discharge a Prisoner committed by either House, during the Sitting of Parliament ; that the Houses are the only competent Judges of their own Privileges ; and that their Determinations are not to be reviewed or examined by inferior Jurisdictions.

“ The Law of Parliament, therefore, being a Part of the Law of the Land, Commitments in consequence thereof, by either House, are not prohibited by *Magna Charta*. And the Judges do now, invariably, so far as has fallen within my Knowledge, remand the Prisoner back to the Place of his Confinement, without affording him any Relief, either by Bail or otherwise.

“ The



“ The Law of the Land not giving the Council  
 “ the least Colour of Right to commit for Breach  
 “ of Privilege, or what they call Contempt of their  
 “ House, they must found their Claim upon  
 “ the Usage and Practice of the House of Lords  
 “ in *England*. It will be necessary, therefore, to  
 “ enquire what Affinity or Resemblance there  
 “ is between them, to intitle the Council to a  
 “ derivative Right to the high Privilege exercised by the Lords.

“ The Lords are a permanent Body, inheriting  
 “ the Right of Legislation independent of the  
 “ Crown. They are the hereditary Counsellors  
 “ to the King, and Guardians to the State.  
 “ The Power of Judicature resides in them,  
 “ in the dernier Resort. They try their own  
 “ Members on Life and Death, without being  
 “ under the Obligation of an Oath. And all  
 “ these, and many other high Privileges, they  
 “ inherit from the best of Titles, Prescriptions,  
 “ and Usage for Time immemorial. Indeed  
 “ they are of the very Essence of the Constitution.

“ Compare the Constitution of the Council  
 “ with that of the Lords, and where shall we  
 “ find Cause to infer, that they possess, or ought  
 “ to possess, the Powers of the latter ?

“ The Council are appointed during the Plea-  
 “ sure of the Crown, removeable at Pleasure—  
 “ and may be suspended by the Governor.  
 “ They hold their Office, and all the Appen-  
 “ dages to it, at Will, and therefore want that  
 “ most essential Requisite of Independency, to  
 “ constitute them a Branch of the Legislature,  
 “ or in any Respect to assimilate them to the  
 “ Lords. Unhappy for the People it is so,  
 “ much to be wished it were not so; and that  
 “ while they claim the Power of the Lords  
 “ House over the Person of the Subject, the  
 “ Subject had the same Degree of Security for  
 “ the due Exercise of that Power, which he  
 “ has in the House of Lords. The People have  
 “ nothing to fear from the Lords: They are  
 “ their Guardians, and a Bulwark of Defence  
 “ against Oppression and Tyranny. They are  
 “ numerous as well as independent: No private  
 “ Pique or personal Resentment can influence  
 “ there.—HERE, the most important Concerns  
 “ of the Province are often, very often, deter-  
 “ mined at a Meeting of Three of the Mem-  
 “ bers of the Council; very seldom that they  
 “ exceed Four; and the Object of their Care  
 “ is more particularly *the Prerogative*.

“ It is true, the Council do in this, as well  
 “ as some other Provinces, concur in the pass-  
 “ ing

“ ing of Provincial Laws. This is in conse-  
 “ quence of Instructions from the Crown, re-  
 “ straining the Governor from giving his Assent  
 “ to any Law that has not that Sanction: And  
 “ from this single Circumstance it is, I appre-  
 “ hend, that the Council have created themselves  
 “ an Upper House, and have assumed that Ap-  
 “ pellation in their Intercourse with the Com-  
 “ mons House; although they are invariably  
 “ styled, by the King’s Instructions, and in  
 “ their Appointment, *the Council*. From this  
 “ important Circumstance also, it is, that they  
 “ would derive to themselves other Powers,  
 “ incident and indeed indispensably necessary to  
 “ the House of Lords, but dangerous and un-  
 “ necessary to be exercised by the Council; as  
 “ if a Right to advise the Governor to pass or  
 “ reject a Bill, involved in it, of consequence,  
 “ all other Privileges belonging to the Upper  
 “ House of Parliament.

“ The Freedom and Liberty of an *English*  
 “ Subject are of so high Estimation in the Eye  
 “ of the Law, that, to deprive him of them,  
 “ it is incumbent on those that would do it, to  
 “ shew their Right clearly and incontestibly.  
 “ Loose and vague Reasoning, fallacious Con-  
 “ clusions, specious Inferences, or bold Affir-  
 “ mations, will not do: The Judgment of his  
 “ Peers, or the clear Voice of the Law of the  
 “ Land,

“ Land, must justify, and nothing else can justify  
 “ the Commitment or Imprisonment of any free  
 “ Subject whatever.

“ Upon the most mature Consideration, as far  
 “ as my slender Abilities will enable me to  
 “ judge, I am of Opinion, That there is no  
 “ Foundation in Law to warrant the Commit-  
 “ ment now under Consideration : That it would  
 “ be dangerous to countenance such a Usurpation  
 “ of Power in the Council, would render the Li-  
 “ berty of the Subject precarious, and introduce  
 “ Novelty and Innovation, destructive of sound  
 “ Law, and every Principle of Justice.

“ The Commitment therefore, in my Opinion,  
 “ is to be considered merely as a Commitment  
 “ of the Privy Council; and in that Case, has  
 “ no other Authority than if done by a private  
 “ Magistrate. The Subject has his Remedy by  
 “ *Habeas Corpus* in either Case; and we are to  
 “ consider, whether the Matter charged is an  
 “ Offence at Law—and if an Offence, whether  
 “ bailable or not.

“ And I am of Opinion, that it is no Of-  
 “ fence at Law—that the Paper referred to in  
 “ the Commitment, being a Protest from Two  
 “ Members of the Council, against the Pro-  
 “ ceedings



“ceedings of that Board, in a certain Matter  
 “depending before the Council, and required  
 “by One of the Members to be printed by  
 “the Prisoner, might lawfully, legally, and  
 “warrantably be printed by the Prisoner, acting  
 “only in the Way of his Profession; the more  
 “especially as it was unaccompanied with any  
 “Remarks, Observations, or Additions of his  
 “his own, but simply and literally as it was  
 “received by the Prisoner from One of the  
 “Members of the Council. And it is not clear  
 “to me, that even the House of Lords would  
 “include such a Paper under the general Idea  
 “of Proceedings of their House, for which  
 “they would punish a Printer who published  
 “it. I am therefore for ordering the Prisoner  
 “to be released.”

This Opinion carries with it irrefutable Argument and Conviction. But our Author, on the contrary, asserts, the Pretensions of the Council to the Powers of an Upper House of Legislature in the Province of *South Carolina*. That the Reader may be enabled to judge, with what Propriety this is asserted, we must take a View of the Constitution of the Colony, from its First Settlement.

The

The First Charter, granted in the Fifteenth Year of King *Charles* the Second, gives full and absolute Power to *Edward* Earl of *Clarendon*, *George* Duke of *Albemarle*, *William* Lord *Craven*, *John* Lord *Berkeley*, *Anthony* Lord *Ashley*, Sir *George* *Carterett*, Sir *William* *Berkeley*, and Sir *John* *Colleton*, and their Heirs, for the good and happy Government of the said Province, to ordain, make, enact, and under their Seal to publish any Laws whatsoever, either appertaining to the public State of the said Province, or to the private Utility of particular Persons, according to their best Discretion, by and with the Advice, Assent, and Approbation of the Freemen of the said Province, or of the greater Part of them, or of their Delegates or Deputies.—

The same Charter farther declares, that all and singular the Subjects and Liege People of us, our Heirs and Successors, emigrating to the said Province, and the Children of them, and of such as shall descend from them, there born or hereafter to be born, be and shall be Denizens and Lieges of us, our Heirs and Successors, and be in all Things held, treated, and reputed as the liege faithful People of us, our Heirs and Successors, born within this our Kingdom, or any other of our Dominions, to have and enjoy all Liberties, Franchises, and Privileges of this our Kingdom of *England*, and of other our Dom-  
nions

nions aforesaid, and may freely and quietly have, possess, and enjoy, as our liege People born within the same, without the least Molestation, Vexation, Trouble, or Grievance of us, &c.

The same Privileges and Liberties are re-declared in the Second Charter, granted in the Seventeenth Year of the same Reign.

Conformable to this Charter, the General Assembly consisted of the Lords Proprietors, or their Representative, a Governor, and the Delegates of the People. No Council or middle Branch composed the Legislature. This Constitution continued till the Year 1721, when it underwent an Alteration in having the King substituted for the Proprietors; since which a Governor appointed by the Crown, and assisted by a Council of State in the same Nomination, has, with the Delegates of the People, constituted the General Assembly, or legislative Authority of the Colony.

To shew that no Alteration did in Fact take Place as to the Number of Branches constituting the Legislature, it is to be observed that the Governor and Council sat together in the same

N

Room,

Room, and acted as one Body\*. This original Usage is decisive to shew that the Council were intended to resemble the Privy Council at Home, not the House of Lords, and therefore instead of deliberating as a distinct Branch of the Legislature, they sat with the Governor to advise him in his legislative Capacity.

This is the "*contemporanea Expositio*" of the the royal Commission, which is "*fortissima in Lege*." Thus the ambiguous Words of the Commission are, by the contemporaneous Exposition of them, clearly explained to mean, that the Council was intended merely to add Splendour to the royal Governor; and, consisting generally of Gentlemen of the Province, to aid him with their Advice in the Duty of his Office. The King found a Constitution already established upon his own Charter. That Charter suffered no Alteration, but in substituting the Crown in the Place of the Proprietary. By the established

\* The following Instances will shew that the original Mode was, for the Governor and Council to sit and act as one Body.

Council Chamber, February 10, 1721.—A written Message from the Governor and Council to the Commons House of Assembly, signed by the Governor, and One of the Council.

Commons House.—Ordered, That Major Thomas Hepworth do carry to the Governor and Council—the Bill, &c. June 13, 1722. The Journals abound with such Proofs.

Constitution,



Constitution, the People had One-half of the legislative Power. It was not therefore in the Option of the Crown to reduce them to One-third, which would have been the Case had a Council been established as a separate Branch of Legislature.

This Mode of the Governor and Council sitting together as one House of Assembly, continued till Mr. *Lyttleton's* Administration \*, when, on some Quarrel with the Governor, the Council removed into another Room. If the Council, therefore, are a distinct Branch or any Branch of the Legislature, they are self-created. Their sitting and acting separately is a late Practice, prompted by a quarrelsome Disposition. It is very lately that they erected a magnificent Bar to their *House*, as they are pleased to term it, and approached (in their own Imagination) a Step nearer to the Dignity of a House of Peers, by choosing a Speaker†—It

\* Either at the End of Governor *Glen's*, or the Beginning of Governor *Lyttleton's* Administration.

† Such Mimickry has ever been the Harbinger or Attendant of some wanton or violent Attack upon the Privileges of the Representative Body—therefore it is not surprizing, the Council (according to our Author, P. 60)—“are represented as arrogating to themselves *Powers* which never were intended to be bestowed upon them, “that the People believe they are mere *Tools* and *Engines* to the Crown, “from whom they pretend to derive *Powers*,” in order to sanctify their own “*Usurpations*.”

would be extraordinary indeed if these trifling Acts, proceeding entirely from themselves, should invest them with the high and transcendent Powers of a Branch of the Legislature, and materially alter a Constitution established upon the Practice of so many Years. The very Supposition of it is an absolute Absurdity.

Bearing then these Things in Mind—the original Constitution in which the Legislature consisted of Two Branches only; the Practice of the Governor and Council sitting together as one Branch of the Assembly, in which they were only his Privy Counsellors, and the dangerous Impropriety of trusting a dependent Body with Powers which are proper only to an independent Body—the Reader will more easily detect the Fallacy and Weakness of those Arguments, calculated to maintain the Claim of the Council to legislative Privileges, and the Authority grafted upon it.

The Author's Argument drawn particularly from the King's Commission to his First Governor, I have already answered. It is not probable that any such Innovation as he contends for was intended; it is plain, from this Practice immediately ensuing, that no such Intention was under-

understood, and it is certain that such an Innovation would have been violent and illegal.

Our Author, however, is not quite of this Opinion. " Our Constitution, says he, is derivative, and entirely flows from the Crown, is wholly *ex gratia*, and therefore subject to such Modifications upon constitutional Principles, as his Majesty shall from time to time, in his royal Wisdom, see proper and expedient ; provided also, that they are not repugnant to any subsisting Laws †." A very courtly and convenient Doctrine truly. One would imagine we had got back somewhat more than a Century, into the Days of omnipotent Prerogative. But this Writer has an admirable Knack of contradicting himself. Here he has placed the Inhabitants of *South Carolina* at the Mercy of the Crown, deriving every Thing from its Grace and holding it at Pleasure ; yet, in a few Pages, he tells us, the " Colonies are Parts and Parcels of the *British* Empire, and settled by *British* Subjects ‥." Have then *British* Subjects no Rights, but such as flow from and depend upon the Will of the Crown ? Is not a *British* King the Creature of the Constitution, and the Subject of the Law ? Old *Bracton* tells us, the Law is his

Superior §. He is bound, says *Fortescue*, to rule according to Law \*. From whence then did he derive this mighty Power of making, modelling, and controuling the Constitution? In Truth, our Author has no Objection to the People's comforting themselves with the empty Name of *British* Subjects, provided they do not presume to claim any of the Privileges essential to that Character.

“ I never, says he, was able to comprehend, how the Commons House of Assembly presumed to liken themselves to the House of Commons of *Great Britain*, and then drop all Sight of that Model from which the other Branches of our subordinate Legislature are manifestly taken †.”

I am glad it is in my Power to assist this “worthy Writer's Comprehension.” The Commons of *Carolina* liken themselves to the Commons of *Great Britain*, because they stand in the very same Relation to the People; and the Similitude cannot be extended any farther, because the Council are totally different from the House of Lords. The one is independent, the other dependent; the one permanent, the other precarious; the

§ L. 2. C. 16.

\* C. 9.

† P. 37, &amp;c.



one hereditary, the other at Will. Since then the Council confessedly owes its Institution to the Crown, the People are surely not to blame for its being so utterly dissimilar to that Model on which it was pretendedly framed.

There never was penned a greater Rhapsody of Nonsense and Servility than is contained in the following Paragraph—"The Rights and Privileges of the Commons House are neither created nor recognized by any Statute of *Great Britain*; they arise, as it were, by Grant from the Crown; their Legislature owes its Establishment to the King, and every Claim they set up springs to them from the same Medium through which the Council derive theirs. This being the true State of a plain Fact (*O Impudentiam!*) it follows as a Consequence, that when the Crown gave Permission to call an Assembly, they surely might appoint a Council, and lawfully invest them with the Powers expressed in his Majesty's Commission and Instructions \*."

The Rights and Privileges of the Commons House spring from the Rights and Privileges of *British* Subjects, and are coeval with the Constitution. They were neither created, nor can they

\* P. 37.

be abolished by the Crown. The Charter recognized, but could not create them. The Right of being represented in that Legislature, by whose Acts they are bound, is the unalienable Birthright of *English* Subjects. This Claim is prior and paramount to any royal Grant. The Charter was only a Recognition that emigrating could not work any Forfeiture of the undoubted Rights of the Subject; Rights which are equal, not inferior, to those of the Crown. And shall this antient, undoubted, unalienable Claim, this glorious, this inestimable Birthright, be compared with the Existence of a Council; created and annihilated by the Fiat of the Crown, and removeable at the Pleasure of a Governor, even without assigning a Reason\*. The gilded Motes that people the Sunbeams are scarce less permanent or less respectable. The Premises being as opposite to Truth as Light is to Darknes, what becomes of the Conclusion, † “that when the “Crown gave Permission to call an Assembly, they “surely might appoint a Council, and invest them “lawfully with the Powers expressed in his Majesty’s Commission and Instruction?” A modest and most logical Conclusion! Because the King has a Right, and of Necessity must vest the Powers of Government, *which he does possess*, in

\* Witness a Suspension and Removal by Governor Lyttleton.

† P. 38.

his Instrument the Governor ; therefore he surely has a Right to alter the Constitution, and invest a Council of his own Creation with Rights and Powers which he *does not possess*. The Powers granted by this Commission and Instruction are far greater than the House of Lords claim or exercise. Not only the Right of Legislation, but that of originating, and framing Money Bills. Yet this Writer talks of the Principles of the Constitution as the Guide of the Crown in these Usurpations, which he modestly stiles Modifications. Such is his Logic ; but it would be a public Misfortune, if his Abilities were not as mean, as his Principles are *bad*, and his Purposes pernicious.

We are next presented with an Act of Assembly in 1721, which, because it recites that his Majesty had been pleased to commissionate, under the Great Seal of *Great Britain*, *Francis Nicholson*, Esquire, Governor, &c. over the Province, with full Powers to call a General Assembly—he stiles a Recognition, expressly shewing that the Powers to call a General Assembly originated with the King himself. One additional Word will render this Assertion perfectly true. It shews that the *Governor's Powers* to call a General Assembly originated with the King himself. Not an Iota more. The Rights of the  
O People

People to be convened in General Assembly it neither relates to nor mentions. The Power of every Governor most certainly is devolved upon him from the Crown, it originates with the King; but God forbid that the Rights of the People should be held by so precarious a Tenure, or originate with any Being but the King of Kings. The Prerogative of calling Assemblies is a Flower of the Crown, not for the Ornament of the Prince, but for the Use of the People. Prerogative, says Mr. *Locke*, is created for the Benefit of the People, and therefore cannot be exerted to their Prejudice. Not to employ it to the Purposes for which it was given would be injurious and against Law, as that great Lawyer *Finch* will witness, when he declares, "That the King's Prerogative stretcheth not to the doing any Wrong\*." The Meeting of Freemen or their Delegates is of Right, not of Grace. When the Bill of Rights declares that for Redress of all Grievances, and for the amending, strengthening, and preserving of the Laws, Parliaments ought to be held frequently, it does not give a new Right, but recognizes an old one, coeval with the Constitution and essential to its Existence. From the Beginning of Record the Participation of *English* Subjects in the Legislature, by whose Acts they were bound, is

\* *Finch's Law*, P. 84.



specifically proved. *The Mirror*, the most ancient and authentic Book in Law, tells us, they were assembled Twice a Year under *Alfred*\*. The Laws of *Edward* the Confessor privilege People coming to Parliament from Arrest †. The following is a Record of Parliament held in the Reign of Canute—*Episcopis, et Religiosis, 7 Ducibus, 7 Comitibus, nonnullis Abbatibus, quampilurimis, gregariis, militibus, ac cum Populi multitudine copiosa—ac omnibus ad hoc in eodem Parlamento, personaliter existentibus, votis Regis unanimiter consentientibus præceptum et decretum fuit ‡*. And shall Subjects, drawing their Rights from so high, so sacred a Source, be told, by a Wretch, whose Vices only have raised him to a Title, that they are *ex gratia*; flowing, like the Powers of the Council, from the Bounty of the Crown? Had the Words of the Act been really a Concession, still they ought to be construed as Words of Civility, not of Subjection, agreeably to the Exposition of the Words, “If it please him” (the King) in the Statute of *Glocester*, which were solemnly adjudged to be Words of Reverence only, not of Resignation §.

\* C. 1. † C. 3. ‡ Pref. to 9 Co. § Hawk. 381.

In the same Strain of Sophistry, he tells us, that the Term Privilege, in the 35th Instruction, “ points directly to the Members of the Council, “ exercising legislative Duties.” The Words of the Instruction will prove the Falshood and Fallacy of this Assertion. “ It is also our further “ Pleasure, that the *Council* have the like “ Power of framing Money Bills as the *Assembly*; “ and you are expressly enjoined not to allow “ the *said Assembly*, or any of the Members “ thereof, any Power or Privilege whatsoever, “ which is not allowed by us to the *House of “ Commons.*” Here we see a Discrimination is expressly made between the Council and Assembly, and Privilege is applied to the latter, which is rendered still more explicit by referring to the House of Commons. How poor must this Man’s Cause be, when he builds an Argument on Premises, which of itself refutes the Conclusion he draws ! Nothing can be more manifest than that neither the Instruction, nor the Act referring to it, has the least Relation to the Council in Point of Privilege, which, as clearly as Words can express, is confined to Members of Assembly alone. As to that Part of the Instruction which does really relate to the Council, and gives them the Power of framing Money Bills, I presume, that even he will not contend that it is legal or of the least Validity. For, after laying it down as an  
“ undeniable

“ undeniable Position that the King can give  
 “ no Constitution to the *American Colonies*, but  
 “ One resembling that of *England*,” it will  
 not be quite consistent in him to suppose  
 or maintain that the King can, by his sole Au-  
 thority, give that Power to his Council in *Caro-*  
*lina* which is not permitted to the House of  
 Peers in *England*.

He very confidently asserts, however, that in  
 consequence of this Instruction, it was the uni-  
 form Practice from 1721 to 1735 for the Coun-  
 cil to frame, alter, and amend Money Bills, which  
 he appeals to as an irrefragable Argument in  
 Support of the Council’s legislative Rights.  
 He has not, however, been pleased to produce  
 a single Instance of this uniform Practice\*, and  
 therefore I presume he has none; for he is not

\* It is observable that the Journals, during this Period, abound with  
 Orders, by the Assembly alone, to the Treasurer, to pay Monies out of  
 the Treasury. Governor *Johnson*, the Second Governor under the  
 King’s Commission, by a Message to the Assembly, dated the 6th of  
*May* 1731, which he probably wrote in the Council Chamber, signifies  
 the Expediency or Necessity of paying a Sum of Money for certain  
 public Services, and concludes, without taking the least Notice of the  
 Council, I shall give Orders for the Payment, if *you* approve of it.  
 This, surely, puts as strong a Negative on the Supposition that the  
 Council interfered in framing Money Bills as the Case will admit.  
 I cannot be imagined that the Governor would have offered the  
 Council such an Affront as this Message must have been, had any such  
 Idea been entertained as that they were a legislative Body, to interfere  
 in the Disposal of Money.

sparing in Citations, unless they make against his Positions †. But, if in Contradiction to his usual Manner, he should have told a solitary Truth, what would it prove, but that a bad Practice had existed, which, as it ought, has been abolished. If this had been conceived to be a legal Right, why should it have been given up ever since the Year 1735? Surely so long a Disuse of a Practice so doubtful and so short, is the fullest Condemnation either of its Legality or of its Policy. It seems, then, that this irrefragable Argument for the legislative Rights of the Council is founded on nothing more than a dubious Practice, illegal in its Origin, brief in its Existence, and certain in its Abolition.

The few Instances in which Mention is made of Two Houses, Upper House, Legislative Powers, &c. which he has gleaned from obsolete and expired Acts, are ambiguous and inconclusive. Indeed, they plainly relate to the House formed by the Governor and his Privy Council. But in no Event can doubtful and incautious Words give essential Rights, much less effect so

† Among other *such* Proofs of this Writer's Modesty and Impartiality, we find *One* in his Recital (P. 39.) of the Eleventh Section of a Provincial Act of Assembly declaratory of the Privileges of the Assembly, in which he has carefully suppressed these important Words, "*of Right had, might, could, or ought to have in the said Province.*"—Thus has he mutilated the Clause to suit his own Purpose, and offered it to his Readers as a genuine Quotation of the Law.

important



important a Work as that of constituting a Branch of the Legislature.

The fulsome Adulation on the *English* Constitution by a Wretch who wishes its Destruction, whose Principles are inimical to the Virtues which support it, is less tolerable than his open Execration. The foulest Breath of Slander, from an avowed Enemy, is Perfume, when compared with that of a treacherous Friend; the Praise of lying Lips and a deceitful Heart.

To review and to refute his Arguments is the same. On whatever Foot he endeavours to fix this legislative Council, it will not stand. Are the King's Commission and Instruction to support it? That cannot be, for they are clearly unconstitutional or irrelative. Will the Term Privilege used in those Instruments and recited in the Act of Assembly avail him? Alas, no! for it manifestly appertains to Members of Assembly in direct Distinction from the Council. Will he then find more Support in the contemporaneous Exposition of the Commission, &c? By no Means, for their sitting from the Beginning, with the Governor, is a Demonstration that they neither acted nor were regarded as a separate, distinct, independent Branch of the Legislature. But the framing Money Bills will perhaps  
assist

assist him. Not at all, for not to mention the Doubt whether he can produce a single Instance of it, the Practice, if it ever did exist, has been long since and utterly abolished. Nor will their having originated any Bills whatever relieve him, since he himself owns, that even of this the Examples are not frequent\*. In this Distress can we blame him for imploring the Aid of a few ambiguous, impotent Expressions, forced from the Obscurity of some obsolete Acts? These are Straws, the Catching at which is at once a Symptom of the Weakness and Desperation of the Cause.

The more you consider the Arguments used and the Proofs adduced, the more you are convinced, that they were never intended to act as a distinct Branch of the Legislature; that the Instances of their having done so are doubtful, desultory, and inconclusive; and, upon the Whole, that in the Exercise of their Powers as a Privy Council they pursued a Mode which so nearly resembled that of a Branch of the Legislature, as to deceive an incautious Observer into a Belief that they really were a separate House of Assembly. There is no Doubt too that under the Cover of their real Character, they have

\* P. 46.

sometimes,

sometimes, perhaps artfully, and with a Design of Usurpation, done those Acts which are competent only to legislative Authority. But such Instances, were they more frequent, would not warrant their Claim. The Usage which gives Validity to any Claim must be reasonable\*, certain†, and consistent‡. If it can be proved, as I trust this has been, to be unreasonable, dubious, and inconsistent, it cannot be maintained. It is always open to the Enquiry of Reason and the Test of Truth. *Consuetudo nunquam prejudicat veritati* § is a sound Maxim of Law; and no Antiquity can sanctify it if bad ||. Upon bringing the Claim of the Council to this Trial, we have found that in fact it is *not*, and upon considering its Constitution we shall perceive that it *ought not* to be a Branch of the Legislature.

That the Council ought not to be a Branch of the Legislature is plain from this Writer's own Admissions. He admits, that the Crown must, in its Modification of the Constitution, be directed by *constitutional Principles* §.—The constitutional Principle he acknowledges to be, that every Branch should be a Check upon the others\*. He agrees, that the Council, holding their Places at Will, are dependent on the Crown†; from

\* Co. Lil. 114. † 1 Rol. 565. ‡ 9 Rep. 58. § 6 Rep. 6.

|| 3 Bur. 1767. § P. 37. \* P. 24. † P. 58.

all which the Conclusion is inevitable—that the Council being dependent, cannot act as a Check upon the Crown, and therefore, upon constitutional Principles, ought not to be a Branch of the Legislature. Had this Writer quoted Judge *Blackstone* with any Degree of that Singleness of Heart, which he professes, he would not have deceived others and exposed himself. The express Opinion of that Author is, that the Dependence of any One Branch upon another, is destructive of the Constitution. “For if ever,” says he, “it should happen that the Independence of any One of the Three Branches of the Legislature should be lost, or that it should become subservient to the Views of either of the other Two, there would soon be an End of our Constitution\*.” It is not in the Wit of Man to devise a Method of rendering the Council more completely subservient, than that of its depending for its Existence on the momentary Will and Pleasure of the Crown and of its Governor. Here then, the admitted Fact of Dependence must stand as an insuperable Objection to the vesting any legislative Authority in the Council. There is a Degree of Candour in this Writer, which must strike every one, when he says, “I lay very little Stress upon the Circum-

\* Comment. V. 11. P. 51.



“ stance of a Governor having it in his Power  
 “ to suspend; because this is in some Degree  
 “ provided against in his Instructions; and ar-  
 “ bitrary Removals so seldom occur, that they  
 “ can scarce be supposed to influence the pre-  
 “ sent Subject of Dispute†.” It is certainly  
 his Interest to lay as little Stress on this as pos-  
 sible, because it would of itself be fatal to the  
 Pretensions of the Council on constitutional  
 Grounds. I shall not dispute the Infrequency of  
 arbitrary Suspension; but I will venture to af-  
 firm, that the Instances of virtuous Opposition  
 to the Will of the Crown, or of the Governor,  
 are precisely as rare; perhaps the Complai-  
 sance of the Council, has rendered the Exer-  
 cise of that Power unnecessary. But it must be  
 remembered that the Power is dangerous, not  
 only which *is*, but which *may be* arbitrarily ex-  
 ercised. If the Boast, the Blessing of *English*  
 Subjects be, that they are governed by Law and  
 not by Will, to give the Will of the Crown  
 such decisive Influence in the Legislature, what  
 is it but to poison the very Fountain of public  
 Security, and endanger every constitutional  
 Blessing we enjoy? Would the Council themselves  
 consider seriously of the fatal Consequences of  
 the Power they contend for, they would relinquish

† P. 58.

a Claim, which they cannot possess but at the Hazard of destroying the Constitution, and enslaving their Country.

This Author, conscious that his own Character is vulnerable in every Part—faithless and treacherous in the most sacred Trusts under the Crown; in every Respect a bad Member of the Community, very prudently stipulates to “avoid every personal Reflection, and neither “to cast a Slur on a single Individual, nor to “point at the Character, Principles, or Tenets “of private Persons\*.” But the Character of the Assembly, which ought to be yet more sacred, he treats with all the indecent Licence of insolent Ridicule and impudent Inveective. Such a Man is a fit Instrument to pander the lawless Power, which promises to shield the Vices of the Individual under the Privileges of the Body. He charges the contemptible State to which he himself has reduced the Council, to the malevolent Practices of the Assembly†. Their Declaration—that a Commitment for Contempt by the Council, in the Character of an Upper House, is illegal, unconstitutional, and oppressive—he calls, “a melancholy

\* P. 5.

† P. 60.

“Judg-

“ Judgment, big with Danger and subversive  
 “ of all civil Order; the Bands of our Society,”  
 says he, “are now loosened, the Plan of his  
 “ Majesty’s Government totally disordered, and  
 “ the Commons are the Vortex which swal-  
 “ lows all the Power ‡.

Within a very few Pages we shall find him  
 imputing the Contempt in which the Council are  
 held to themselves, which he just before so in-  
 decently charged upon the Assembly. Let his  
 own Words bear Witness for him——“ And  
 “ what still adds to the Defect is, that as several  
 “ of the Council are frequently and necessarily  
 “ absent on their own private Concerns, and it  
 “ often happens that others are either absent  
 “ from the Province, or through Sickness are  
 “ unable to attend; the Council seldom con-  
 “ sist of more than *Five* Persons; and com-  
 “ monly only *Three*\* assemble to dispatch the  
 “ most *weighty Concerns*. This Circumstance  
 “ lessens the real and constitutional Dignity  
 “ which this Body are intended to maintain;  
 “ and the *People cannot be taught to reverence or*  
 “ *respect* an Institution, the Business whereof is

‡ P. 60.

\* The Author might with strict Truth have added—Three “down-  
 “right Placemen,” Monopolists of Offices, and in every Respect de-  
 pendent.

“transacted, like a Court of Quarter Sessions, by Three Justices of Peace; *thence it is*, that the middle Branch is in a Manner overwhelmed by the Force of Numbers in the Lower House, and that they *fall into Derision and Contempt* for Want of Members in their own\*.” If the foolish Discovery of this Truth were in any Manner meritorious, this Passage might atone for the Falshood of Half his Pamphlet. For it is at once a Recantation of what he had before advanced, and a demonstrative Proof that the Council, as they are now constituted, are utterly unfit to be trusted with such high and important Powers as those of Legislation.

¶ “The Vitals of the civil State,” says he, “have received a mortal Wound; but my Hands are not embued in this cruel Murder‡.”

Do you indeed, Sir, wash your Hands of this political Murder? You who were the prime Mover of all the Mischiefs, the Province laments — you who are the sole Author of that daring Attempt upon the Liberty of the Subject, in the Imprisonment of the Printer? The Illegality of that Commitment

\* P. 72.

‡ P. 61.



has already been irrefragably proved in Mr. *Lowndes's* Argument; and since you “allow it to be so, if the Council are not a Branch of the “Colony Legislature\*,” as I have clearly shewn they are not, it must appear to be an arbitrary, unwarrantable Act of Violence and Usurpation. But this Writer affects to apprehend that the Council cannot exist without legislative Powers to protect them. He cannot see any Thing else to “oppose the Sons of Violence and Disorder “from intruding into the Council Chamber, “over-awing their Proceedings, obstructing “the Members in their Deliberations, and committing every Act of Disrespect and Insolence ‡.” Is he then ignorant that the Council of *Pennsylvania* are in the same Situation? Did he ever hear of such Consequences attending their Want of this important Privilege? Is there no Civil Power in *Charles Town* to protect any Body of Men legally assembled, from Violence, Intrusion, Insolence, and Riot? But to render this Declamation still more ridiculous and absurd, he has, himself, told us that his Majesty’s Privy Council in *England* have no such Privileges||. Is then the Governor’s Privy Council of so much higher Dignity and Importance than

\* P. 60.

‡ P. 61.

|| P. 41.

the immediate Council of the King, that the former must be vested with Privileges which are denied to the latter, and the one shielded from the Insolence and Disrespect to which the other is exposed?

The Council, he tells us, “are a Sort of Barrier to withstand the Encroachments of the “Lower House\*.” And pray, Sir, who are the Barrier against the Encroachments of the Crown? Does our Constitution know of no Encroachments on the Part of the Crown? Have we heard of no arbitrary Instructions, no dangerous Usurpations? Is the Liberty of the Subject at this Moment unviolated by the unconstitutional Mandate of a Minister, under the Colour of an additional Instruction? O! but it is enough, that this Body was *intended* to maintain a Kind of Balance between the Crown and the People‖. And from whence are we to infer this Intention? — Why, from Dr. *Blackstone’s* having said, in speaking of the independent Branches of the *British* Legislature, “that the “Two Houses naturally drawing in Two Directions of opposite Interests, and the Prerogative “in another still different from them both, “they mutually keep each other from exceeding their proper Limits‡.”

\* P. 67.

‖ Ibid.

‡ Ibid.

Because

Because an independent House of Lords operates as a Balance between the Prerogative and the People, therefore a dependent, or as he styles it, an *impotent* \* Council, is to answer the same End. This is his Logic, this his constitutional Learning. If we may judge of the Intention from the Execution, nothing can be more manifest, than that the Council never was intended to be a Branch of Legislature, because, *from its very Constitution*, it is incapable of answering the Purposes of such a Power. For what Balance can they form between the Crown and the People? what Check, what Controul can they be upon the Prerogative? Would not a School-boy be whipt for proposing to make Two Scales even, by putting all the Weight into One?—did he ever hear of a Servant controlling his Master, a Dependant his Superior?

Is it in the Power of Words to furnish a stronger Argument against the Council's ever having been intended, or being permitted to exercise legislative Powers, than he himself has produced in the following Passage?  
 “ || I think this Body, acting legislatively, ought  
 “ to be independent, by holding that Station,  
 “ during the Term of their natural Lives, and

\* P. 70.

|| P. 69.

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“ deter-

“ determinable only on that Event, or on their  
 “ entire Departure from the Province. But  
 “ the same Person might, nevertheless, for pro-  
 “ per Cause, be displaced from his Seat in Coun-  
 “ cil ; which Regulation would, in a great  
 “ Measure, operate as a Check to an arbitrary  
 “ Governor, who would be cautious how he  
 “ raised a powerful Enemy, in the Upper House,  
 “ by a rash Removal ; at the same Time that  
 “ the Power of Removal would keep the Mem-  
 “ ber within proper Bounds. The like Tenure  
 “ of his legislative Capacity would likewise suf-  
 “ ficiently secure that *Independence* which is so  
 “ necessary to this Station, and so agreeable to  
 “ the Constitution of the Parent State.” I  
 say nothing of the Importance of every upstart  
 Attorney, commencing Legislator for the Colo-  
 nies. But if these Alterations be requisite  
 to give the Council *that Independency which*  
*is so necessary* to their legislative Station,  
 then they do not now possess that neces-  
 sary Independence — if *his* Regulation be  
 wanted to make them *operate as a Check to an*  
*arbitrary Governor*, then they do not now ope-  
 rate as a Check—it follows, therefore, as a  
 clear and undeniable Conclusion from his own  
 Premises, that the Council being neither in-  
 dependent, nor capable of acting as a Check,  
 it could not, upon constitutional Principles,

have



have been intended to represent the House of Lords, and is incompetent and inadmissible to the Powers of Legislation. To complete the Business, he tells us, that, upon his Plan, the Council “*would possess so much real Independence as to make them superior to Acts of Meanness, Servility, and Oppression* \*,” which is a plain Acknowledgment that they are not now superior to such Acts; and any Man may judge how utterly incompatible a Situation, subject to Acts of *Meanness, Servility, and Oppression* is with the high Trust and Dignity of a Branch of the Legislature.

When this Writer admits with *Milton*, that the true Criterion of civil Liberty is, that of Complaints being freely heard, deeply considered, and speedily reformed, he urges the strongest Condemnation of the Measures of Administration regarding the Colonies. Their Complaints have been received with Reluctance, considered with Ill-temper, and remain totally unredressed. Their Petitions against the Stamp Act were suppressed, their Petitions since have been received with Resentment, and answered with Asperity, Anger, and Reproach,

\* P. 70.

Sir *Egerton Leigh*, President of the Council, at length comes forward in his own Person. Without the Touch of *Ithuriel's* heavenly tempered Spear, he has started up in his own Shape\*. The Account of an Attempt to file a Bill against him, by *T. Powell*, the Printer, for Assault and false Imprisonment, is written so much in the Stile of a wounded Spirit, that there needs not the Use of the first Person to mark the Author. "He reminded their Honors the Judges of the 9<sup>th</sup> Article contained in the Act of Settlement "of Force in that Colony—that the Freedom "of Speech, and Debates, or *Proceedings in* "Parliament, ought not to be impeached or "questioned in any Court or Place out of "Parliament." And pray, Sir, did their Honors pay any Regard to this Admonition?—did they not perceive it was impertinently begging the Question? The very Question was, whether the Council were, or were not a House of Parliament. But your Advice was to prejudge that Question, to take it for granted they were a House of Parliament, and to that Assumption apply the Law, and judge their Proceedings not questionable in any Court or Place out of Parliament. This is Law and Logic, fit to be

\* *Paradise Lost*, B. iv. L. 819.

recommended by the King's Attorney General to the supreme Judges of the Colony—Logic that would shame a School-boy, and Law that would disgrace a Justice's Clerk.

However, it seems to have had a very different Effect upon their Honors. For the Chief Justice "entered very copiously into the Subject, "passed some applicable Strictures, and in express and distinct Terms declared the Council to "be an Upper House of Assembly; in which his "Brethren unanimously concurred." Thus these reverend Judges, as he states it, seem to have determined upon the Question without hearing it, and began their Function exactly where they should have ended. I wish he had vouchsafed to have favoured us with the copious Argument and applicable Strictures of the Chief Justice, that we might judge, as we may do of Mr. *Lowndes's* Argument, how far they are consonant to Reason and Law. In the mean time, I will venture to affirm, that no Judge living can maintain, upon constitutional Principles, that the Council, constituted as it now stands, is, or ought to be an Upper House of Assembly.

The President is determined to be even with the Printer in railing. The Printer had branded  
the

the Proceeding of the President's Junto, " as  
 " the most violent Attempt that ever had been  
 " made in the Province upon the Liberty of the  
 " Subject;" and he, to return the Compliment,  
 exclaims against the Printer's Attempt, as one  
 of the " boldest Attacks upon the Constitution  
 " that Faction and democratical Insolence could  
 " possibly devise." To support his Charge, he  
 appeals to the grossest Misrepresentation of  
 the Fact. " His Majesty's honorable Council,  
 " says he, being the Upper House of Legislature  
 " of *South Carolina*, are first attacked by a Pub-  
 " lication of their Proceedings without Leave of  
 " the House; and when the Printer was interro-  
 " gated, he acknowledged the Fact, and refused  
 " to give any Satisfaction which the Honor  
 " even of a private Gentleman could allow them  
 " to accept †; and such as he offered, manifested  
 " the most daring Disrespect." The Fact is—  
 that a Printer published the Protest of One of  
 the Members of the Council; that being called  
 upon to answer for it, he declared that Member  
 gave it to him to be printed, which the Member  
 in his Place acknowledged to be true. That not

† The bare-faced Falshood of this Assertion appears by the Protest of  
*William Henry Drayton*, Esquire, One of the Council, which shall be  
 presently introduced—Hence Administration may determine what  
 Credit ought to be given to the Representation of such an Incendiary  
 under the Mask of "*Truth, Modesty, and Friendship*."

contented



contented with this, the Council, not *being*, but *assuming* to be, an Upper House of Legislature, voted it a Breach of Privilege, and Contempt in the Printer; for which they arbitrarily committed him to Gaol. That this is true, and the Account in the Pamphlet before me utterly false, I appeal to the Warrant of Sir *Egerton Leigh*.

## SOUTH CAROLINA.

*In the* UPPER HOUSE *of* ASSEMBLY,

TUESDAY *the* 31<sup>st</sup> Day of August, 1773.

“ WHEREAS *Thomas Powell* hath this Day,  
 “ at the Bar of this House, acknowledged  
 “ himself to be the Printer and Publisher of a  
 “ News-Paper called *The South Carolina Gazette*,  
 “ Number 1966, dated *Charles Town, Monday*  
 “ the 30<sup>th</sup> Day of *August* 1773, in which Paper is  
 “ printed Part of the Proceedings of this House  
 “ on *Thursday* the 26<sup>th</sup> Day of *August* Instant,  
 “ which this House hath this Day resolved to be  
 “ a high Breach of Privilege, and a Contempt of  
 “ this House, who hath thereupon ordered, That  
 “ the said *Thomas Powell* should be *therefore* com-  
 “ mitted to the Common Gaol in *Charles Town*,  
 “ during the Pleasure of this House.

“ It

“ It is therefore hereby ordered, by the House,  
 “ that you do receive the Body of the said *Thomas*  
 “ *Powell*, herewith sent to you, into your Custody,  
 “ and him safely in the Common Gaol to keep  
 “ and detain during the Pleasure of this House.  
 “ And for so doing this shall be your Warrant.

“ *By Order of the House,*

“ EGERTON LEIGH, *President.*

“ To *Roger Pinckney, Esq;* }  
 “ *Sheriff of Charles Town* }  
 “ *District, his Deputy and* }  
 “ *Deputies, and to the* }  
 “ *Keeper of the Common* }  
 “ *Gaol in Charles Town.* }

The following Protest is another Proof upon  
 Record of this Author's Veracity :

*A Protest in the Upper House of Assembly, on Tuesday  
 the 31st of August, against the Commitment of  
 T. Powell, Printer, &c. upon a Charge of hav-  
 ing printed Part of the Proceedings of that  
 House.*

# D I S S E N T I E N T.

“ *BECAUSE*, until this Day, there has not  
 “ been any Order, Rule, or Resolution of  
 “ this House against the Publication of what this  
 “ House

“ House may deem its Proceedings. And although in many Instances, Parts of the Proceedings of both Houses of Assembly have been printed, under the Article of News, without any Order from either House; yet hitherto the Printers have not in any Instance been called to Account for such Conduct.

“ *Because, As in the present Instance, the Printer has not made any Misrepresentation of what had been transacted in this House, and has not even made any Remark; so I humbly conceive he does not deserve any Punishment whatsoever. For I do not know of any Instance where a Printer has been punished by the House of Lords in Great Britain, for having only published a Protest.—The only Instance quoted in the Debate, and laid down as a Case in Point, being in my Opinion void of all Foundation. For Bingley was not committed by the House of Lords, as was erroneously insisted upon, for having printed a Protest; but he was committed by the Court of King’s Bench, for refusing to give Bail to answer Interrogatories upon Oath, upon a Charge of printing a Libel against the said Court.*

“ *Because, As the Printer upon his Examination did declare to this House, that when he printed the Proceedings in Question, he only did,*

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“ as

“ as Printers here had been always accustomed to  
 “ do: That, in doing so, he did not mean any Con-  
 “ tempt to this House. That he would not have  
 “ done the *Act* which has given Displeasure, had he  
 “ known it would have violated the Privileges of  
 “ this House: And that, if such a Proceeding did  
 “ violate its Privileges, he was very sorry for it,  
 “ and was willing to ask Pardon of this Honorable  
 “ House. Therefore I am of Opinion, that in a  
 “ free Country, such an Acknowledgment and  
 “ Contrition, expressed by a Free Man, ought to  
 “ have been deemed a sufficient Atonement for  
 “ an Act, which he did not know was penal,  
 “ until declared to be so *post Factum*.

“ Because, I am of Opinion, that a Printer’s  
 “ publishing the Protests of any Members of  
 “ this House, especially by their Desire, and  
 “ without any Remarks whatsoever, *ought not to*  
 “ be deemed a Violation of the Privileges of  
 “ this House. For I do conceive a clear Distinc-  
 “ tion between a Publication of such Proceed-  
 “ ings of the House, as are under the Idea of  
 “ *Votes of the House*, and the Publication of *only*  
 “ *the Protests* of some of the Members, and *the*  
 “ *Causes of them*.—I apprehend, that a *Protest* is  
 “ a *Witness*, the very Meaning of the Word, of  
 “ the Propriety of the Conduct of the protesting  
 “ Member; and as it is the public Justification ]  
 “ of



“ of his Conduct, so in common Justice to the  
 “ Party, it cannot be too publicly made known.  
 “ Therefore, as it is the very Nature of a Pro-  
 “ test, that the Dissent and Reasons should be  
 “ known, so they cannot be more generally  
 “ made known, than by printing them in a Ga-  
 “ zette. And as the very Protest in Question  
 “ says it was made, ‘ *lest we should be thought to*  
 “ *have meditated, or even to have countenanced a*  
 “ *Measure so fatal to the Freedom of our Country,*  
 “ so unless the Protest was published, it is evi-  
 “ dent, the main and express Purpose of it could  
 “ not be accomplished. Therefore, as the Pro-  
 “ test was entered with Leave, and remained  
 “ upon the Journals approved by this House,  
 “ so, in my Opinion, an Implication must neces-  
 “ sarily follow, that the Purpose of it ought  
 “ by a natural Consequence, *and as a Matter of*  
 “ *Course, to be published.* Thus, in my Opinion,  
 “ there was a *clearly implied Leave from the*  
 “ *House* for the Publication of the Protest and  
 “ the Cause of it.

“ WILLIAM-HENRY DRAYTON.”

Whatever there was uncommon, heinous, or  
 cruel in this Proceeding, was unquestionably on  
 the Part of the Council, which never would have  
 been capable of such an Act, but for the Coun-  
 cils of One of the worst and most abandoned of

Men. At the Beginning of his Pamphlet, we heard this Author cry out in Triumph, " I fly to the great Bulwark of our Liberties—the Press—and as it is the peculiar Privilege of a free-born Subject of *Great Britain* to consider the Legality, Justice, and Propriety of public Measures, no Man, with any Face of Reason, can blame my Conduct in this Respect \*."—Where was this Bulwark of Liberty, where this Privilege of a free-born Subject, when a Printer was deprived of his Liberty in this arbitrary Manner? Is it the Baronet's Idea, that the Press is to be only a Vehicle for Falshood and Abuse against the Assembly and the People?—But when the Proceedings of the Council are in Question, then must the Seal of Silence under the Terror of Imprisonment be fixed upon it.

The Attack he has made upon the Bar, I shall leave the Gentlemen of it to repel, as they shall please, either in or out of the *Phalanx*, in which he has marshalled them.

The new Baronet informs us, he has read a *little* Law for his Amusement and Instruction. Very little, God knows, and to less Purpose. How far that little may have contributed to his Amusement, I will not venture to pronounce; but of this I am sure, that it has failed of instructing him. He

has learnt however, that one may commit high Contempt and Misprisions against the King's Person and Government, by doing any Thing that has an immediate and direct Tendency to weaken his Government, or to raise Jealousies between him and his People. Why has he not conformed his Practice to this Precept? Why did he furnish or contribute to furnish those Misrepresentations which produced an Instruction that has weakened and disturbed his Majesty's Government. Why has he by continual Contention, by inciting the Crown to an Enmity against the Province, and an Infringement of their constitutional Rights, endeavoured to raise Jealousies between the King and his good People?

To imbitter the Life of an Individual, to poison one Man's Peace, or take his Life by Violence or Fraud, is highly flagitious. But to subject the whole Community to the Bitterness of Bondage, to poison the Fountain from which all our Blessings flow, to stab at once, through our sacred Constitution, the common Life of all—is the utmost Extremity of human Wickedness. It surpasses far the Flagitiousness of him, who fired the *Ephesian* Dome; it realizes the execrable Wish of that greatest of all the Monsters which *Roman* Despotism nourished. Be this then our Author's Recommendation, be this his  
Fame



Fame—that he has exceeded the worst Character of Antiquity in atrocious Wickedness.

I have thus pursued this Writer through all his Paths of Sophistry and Deception. He has fenced with the Question through Four-score desperate Pages. Evasions, hardy Assertions, and daring Falshoods have emboldened him to put the real Merits at Defiance. But, I trust, in vain. It has been my Endeavour to bring them fully before the Public. I hope the Execution has not entirely disappointed the Intention. I hope it has appeared to every candid Reader—That the Vote of Money to the Supporters of the Bill of Rights was wise in its Policy, and constitutional in its Mode; calculated to conciliate a general Union in Opposition to a general Attempt upon the Liberty of the Subject, and executed agreeably to the undoubted Right and Practice of the Commons House of Assembly—That the additional Instruction, impeaching this Vote, and directing the future Mode of framing Money Bills, was unnecessary and unconstitutional, founded on wilful Misrepresentation, and arbitrarily executed to the Interruption of public Business and the general Distress of the Province; unnecessary, because the Act was irrevocable; unconstitutional, be-  
cause



cause the Right of framing Money Bills is the absolute and incommunicable Privilege of the Representatives of the People—That the Council are not a distinct Branch of the Legislature, because from their First Appointment, they sat with the Governor as his Privy Council, and from thence only acquired the Appearance and Appellation of an Upper House,—because the Crown, to whom they owe their Existence, *could not legally*, nor *has expressly*, constituted them a legislative Body; and finally, because, from their entire Dependence upon the Crown and the Governor, they must operate directly the Reverse of a constitutional Check upon the Prerogative; and, upon constitutional Principles, cannot be trusted with that high Power which they must inevitably abuse—that therefore their Commitment of the Printer for Contempt, as a Breach of the Legislature, was a dangerous Usurpation, and utterly illegal.

These Positions are so clear and indubitable, that contrary Conclusions, with whatever Subtlety and Speciousness they may be urged, must be fallacious. The Web may be wove with such Cunning, that we cannot trace each Thread, and point out the particular Defect, though the whole Piece is evidently bad. That is not indeed [the Case in the “*Considerations*,” for  
not

not only are the Conclusions manifestly false, but the Errors which lead to them palpable and gross.

The Commons House of Assembly may say in this Question, as wise Men have said before them \*, that no People ever trusted more in the Goodness of their King, so far as regarded themselves only; but that the true Liberty of the Subject consists not so much in the *gracious Behaviour*, as in the *limited Power* of the Sovereign, and that seeing there has been a *public Violation* of the Laws by his *Ministers*, nothing can satisfy them but a *public Amends*.

▪ Sir Thomas Wentworth and Judge Blackstone.

P O S T.

## P O S T S C R I P T.

**S**INCE the preceding Sheets were sent to the Press, it was discovered that the Protest said to be made by *W. H. Drayton*, Esquire, is a Copy of one which he had entered the 31st *August* 1773 and which had remained on the Journals of the Council until the 2d *September*, when it was altered by the Council after it had been printed and published in the *South Carolina Gazette*.—This Fact appears in Mr. *Drayton's* subsequent Protest against a Resolution of Council, that the former was, “*false, scandalous, and malicious,*” in which he avers, that except a few very trifling Errors of the Press, “All the other Parts of the Protest published in the said Paper, were *literally* as were expressed upon the Journals the 31st *August*, and remained so till the 2d Day of *September*, when they were altered after Eleven o’Clock, before which Time the Protest was published.”

Amidst this jarring between the Members of the Council, it is not difficult to form a Judgment on which Side the Truth lies—for we do not find, even in the amended Protest as it now stands upon the Council Book, any Thing like “the most daring Disrespect” in the Conduct of the

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Printer;

Printer; but on the contrary that he declared,  
 “ when he printed the Proceedings in Question  
 “ he only did as other Printers had *always* been  
 “ accustomed to do; that in doing so, he did  
 “ not mean any Harm to the Council.” And  
 from the Printer’s own Account, which is sup-  
 ported by Mr. *Drayton*’s Protest both in its ori-  
 ginal and mutilated State, we have the following  
 Evidence——“ that when he was informed by the  
 “ Council that his Publication was adjudged a  
 “ high Breach of Privilege and a Contempt, and  
 “ that *therefore* he must ask Pardon, he answered,  
 “ that he had no Intention by the Publication to  
 “ offend the Honourable Board, that had he  
 “ known it to be a Breach of Privilege he cer-  
 “ tainly should not have done it, that if he had  
 “ erred it was owing to his Inexperience, and  
 “ that he was very sorry for it.—He was then  
 “ ordered into the Custody of the Serjeant at  
 “ Arms (an Officer created by the Council) and  
 “ being brought in again, he was told that he  
 “ must ask Pardon without any *Ands* or *Ifs*,  
 “ otherwise he should be committed to Gaol.—  
 “ To which he replied, that as he did not know  
 “ he had committed any Fault, it was hard to  
 “ confess himself guilty and be obliged to beg  
 “ Pardon, but if he could be convinced that he  
 “ had been guilty of a Breach of Privilege he  
 “ should be very willing to ask Pardon.”—



This is a true State of the Case, which stands uncontradicted, except by a violent Resolution of a Board of Council consisting of Three or Four Members in general Terms, in which it does not appear that even that small Number were unanimous.

The Reader will judge whether the innocent Printer's Answers " manifested the most daring " Disrespect," and whether it is necessary to enlarge the Powers of the Council, who now flatter themselves with the Hope of Protection from the Ministry against a just Complaint for this violent Attack upon the Freedom of the Press and the Liberty of the Subject.—Possibly they may expect not only Protection, but " \* Approbation " for this fresh Mark of their Zeal and Duty."

The Council of *South Carolina* have often and especially of late been so far misled, as to assume to themselves the Dignity and Powers of the House of Lords; but in the present Case, they have exercised a Degree of Tyranny in Vindication of their " ideal " Privileges, for which it seems they could find no Precedent || in the Trans-

\* Confid. P. 15.

|| " The only Instance quoted in Debate and laid down as a Case in " Point, being in my Opinion void of all Foundation, for *Bingley* was " not committed by the House of Lords for having printed a " Protest, &c." — *Drayton's* Protest.

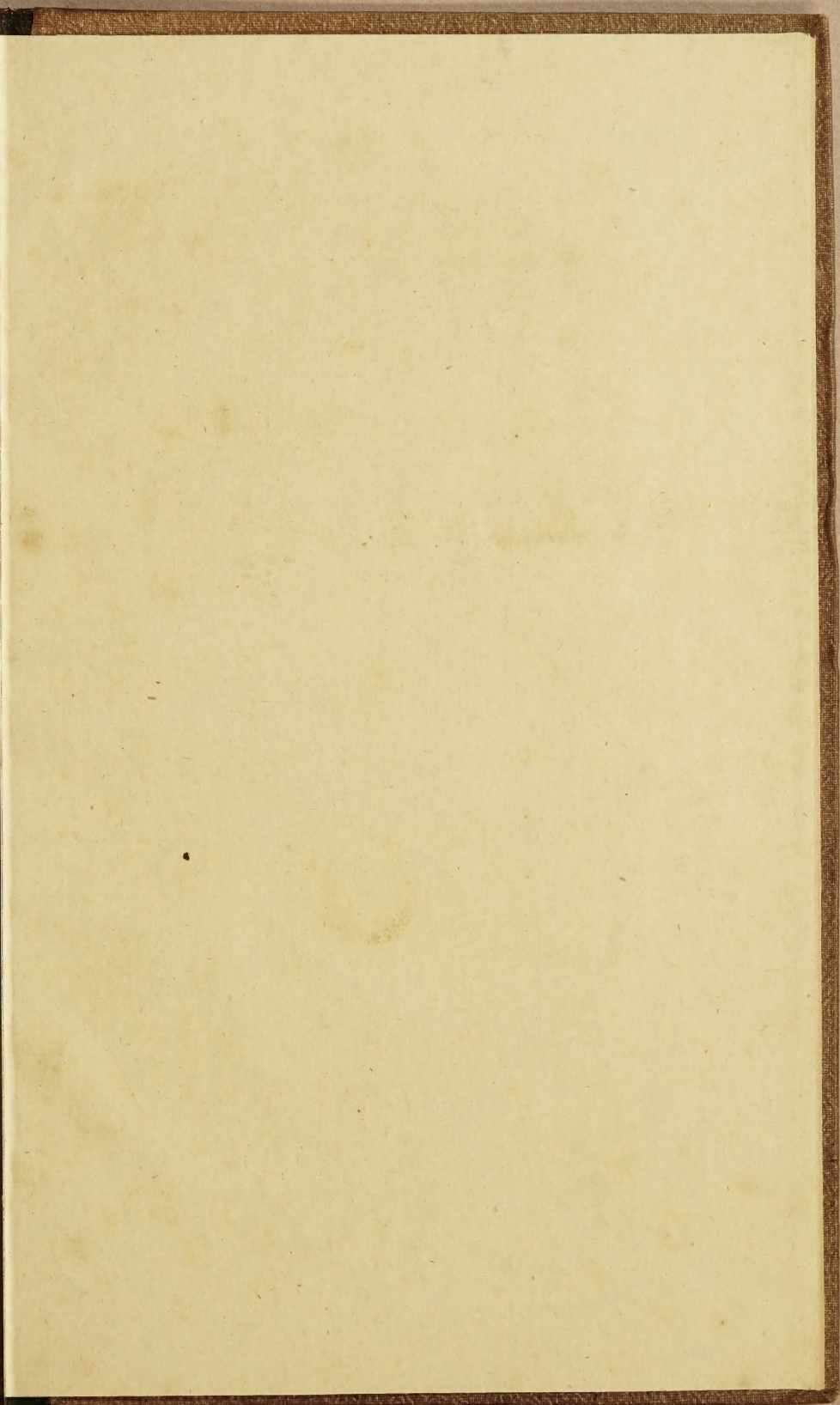
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actions of the Peers, and manifested the Truth of Mr. *Drayton's* Charge in his Second Protest, that their Proceedings were “ arbitrary and “ unjust.”

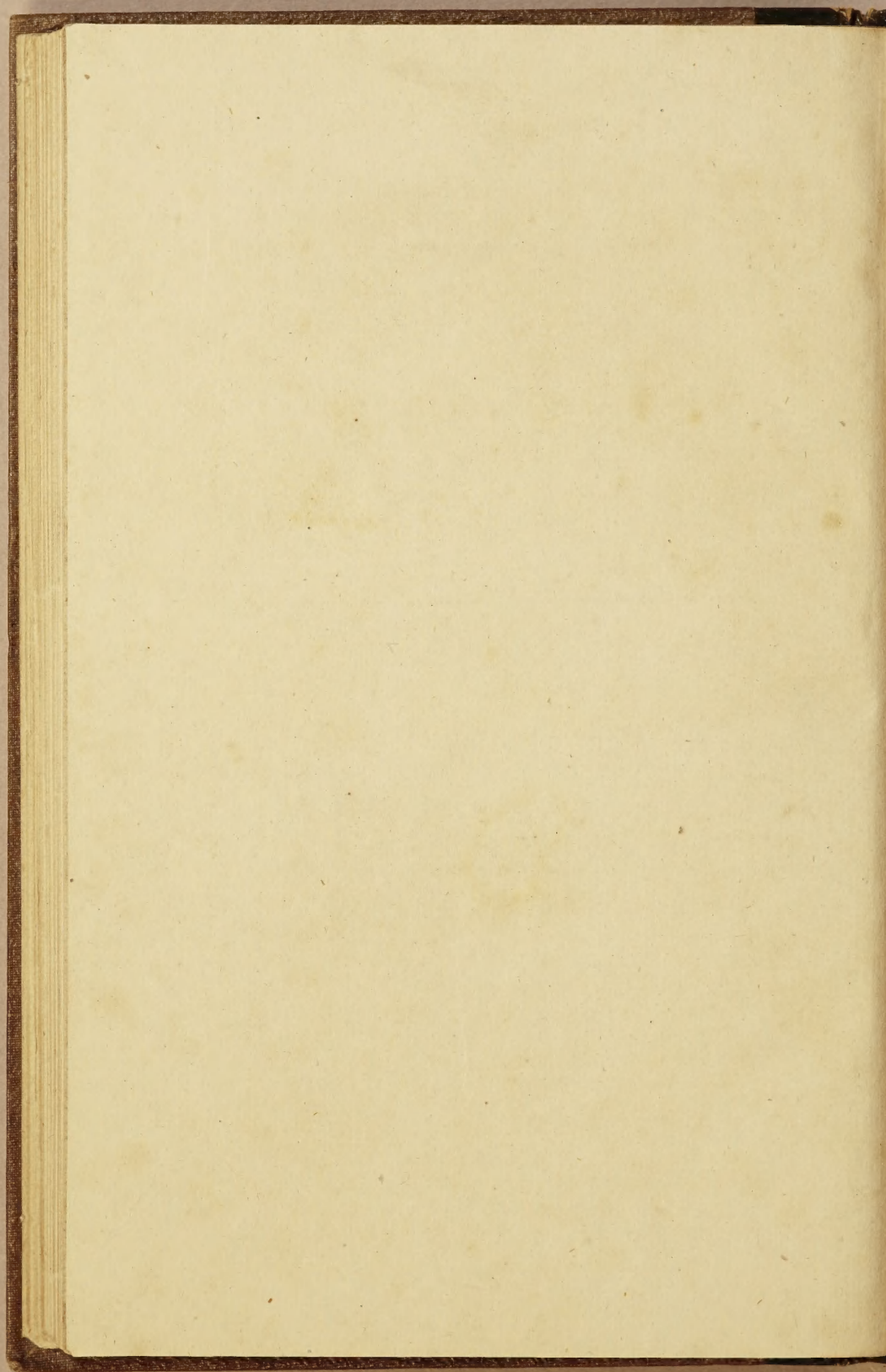
# FINIS.

## ERRATA.

- P. 26. L. 20. for *Treasure*, read *Treasurer*.  
 P. 28. L. 11. for *And is*, read *and it is*.  
 P. 39. L. 13. for *Purposes for*, read *Purposes to*.  
 P. 54. L. 18. for *shall undertake*, read *will undertake*.  
 P. 57. L. 4. for *and*, read *to*.  
 P. 91. L. 20. for *Prescriptions*, read *Prescription*.









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